Canadian Railway Office of Arbitration
CASE NO. 2152
Heard at Montreal, Tuesday, 11 June 1991
concerning
VIA RAIL CANADA INC.
and
UNITED TRANSPORTATION UNION
DISPUTE:
The dismissal of Mr. J.G. Garneau for violation of Rule G of the Uniform Code of Operating Rules on August 4, 1990.
JOINT STATEMENT OF ISSUE:
Mr. J.G. Garneau was the conductor on Train No. 143 operating between Senneterre and Cochrane.
Upon arrival, as Mr. Garneau was registering, the operator at Cochrane Station contacted the Corporation and reported that Mr. Garneau was in violation of Rule G.
Subsequently, following investigation, Mr. Garneau was dismissed for the rule violation.
The Union maintains that the Corporation has not discharged the burden of proof and that Mr. Garneau did not receive a fair and impartial investigation. The Union requests therefore that Mr. Garneau be reinstated into his employment with full compensation for all time lost.
The Corporation maintains that Mr. Garneau did violate Rule G, that there was sufficient evidence to support the allegations brought against him and that the opportunity to refute this evidence was given to Mr. Garneau.
FOR THE UNION: FOR THE CORPORATION:
(SGD.) R. LEBEL (SGD.) C. C. MUGGERIDGE
GENERAL CHAIRPERSON DEPARTMENT DIRECTOR, LABOUR RELATIONS
There appeared on behalf of the Corporation:
D. Scalia - Counsel, Montreal
K. Taylor - Senior Labour Relations Officer, Montreal
D. Fisher - Senior Labour Relations Officer, Montreal
T. Lyttle - Witness
Dr. J. Flack - Witness
And on behalf of the Union:
B. Burns - Counsel, Toronto
R. Lebel - General Chairperson, Quebec
G. Allaire - Local Chairperson, Senneterre
G. Miller - Witness
J. G. Garneau - Grievor
AWARD OF THE ARBITRATOR
The first question to be answered in this grievance is whether, according to the preponderance of the evidence, there was a violation of Rule G which forbids the consumption of alcohol at work. Inasmuch as this concerns a conductor responsible for the movement of a passenger train, the charge is very serious indeed. If proven, such an infraction would normally be deserving of discharge.
The importance of Rule G and the consequences resulting from its violation were expressed in CROA 1074 as follows:
As to the matter of the severity of the penalty imposed, violations of Rule ``G'' have been considered to be particularly serious offences in the cases of employees involved in the operation of trains. While discharge may not be an ``automatic'' penalty, it will usually be appropriate, where the violation is established. A distinction has been drawn between those with prime responsibility for train operation, such as an Engineman or Conductor, and the other members of a train crew. While I think that this distinction is proper, it is a narrow one: the other members of a train crew are indeed responsible for the safety of the train, and there is no doubt that severe discipline is

appropriate in the case of a Rule ``G'' violation by any crew member. In every case, however, all factors are to be considered. ...

The dispute in CROA 1074 concerned a baggageman and not a conductor. In the particular circumstances of that case, given the level of responsibility of the employee, the fact that he was not visibly affected by the consumption of a small quantity of beer some hours prior to his tour of duty, and in light of his clear discipline record as well as his seniority, the arbitrator deemed it appropriate to reinstate him into his employment without compensation.

In the instant case, notwithstanding Mr. Garneau's twenty-seven years' service, if the evidence establishes that he consumed alcohol during his tour of duty on passenger train No. 143 on August 4, 1990 when, as the conductor, he was responsible for the security of his train and its passengers, it would be difficult to avoid the conclusion that discharge was the appropriate measure of discipline. However, in the Arbitrator's view, the evidence put forward by the Corporation is insufficient to establish the alleged violation.

The employer's case is based entirely on the evidence of a single person, Ms. Tracy Lyttle, who was the operator on duty at Cochrane on August 4, 1990 when the grievor's train arrived at the station. She relates that when Mr. Garneau presented himself at her counter he smelled of alcohol, his eyes were bloodshot and his complexion was flushed. However another witness, Gerry Miller, an employee of Ontario Northland Railway who was also present, did not arrive at the same conclusion. Mr. Miller supports the evidence of Ms. Lyttle concerning the presence of a slight odour at the counter when

Mr. Garneau presented himself, but he was unable to affirm that it was the odour of alcohol. Furthermore, all of the witnesses to Mr. Garneau's conduct that evening, including Ms. Lyttle, Mr. Miller and the two other crew members of train No. 143, are in agreement that they saw nothing abnormal in his speech or physical behaviour on the day in question.

It goes without saying that a serious accusation which involves grave consequences requires a corresponding level of proof. Whatever may be the opinion of a fellow employee or an employer, an arbitrator cannot, without supporting evidence, elevate a suspicion concerning the condition of an employee to the level of conclusive proof. (See CROA 1886.) However, that is not to say that the Corporation is not able to protect its interests where the breath of an employee is the sole indication of a possible violation of Rule G. It can always request that the employee submit to a breathalizer test for valid and reasonable grounds (see CROA 1886). In the instant case that was not done and all that is before the Arbitrator is contradictory and uncertain evidence which I must judge to be insufficient to support so serious an accusation.

For these reasons the grievance is allowed. Mr. Garneau is to be reinstated into his employment without loss of seniority and with compensation for loss of wages and benefits. As the Arbitrator has concluded that there was not just cause for the imposition of discipline, it is unnecessary to examine the contention of the Union concerning the procedure which was followed by the Corporation during the disciplinary investigation.

June 14, 1991 (Sgd.) MICHEL G. PICHER

ARBITRATOR