

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2260

Heard at Montreal, Tuesday, 9 June 1992

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Dismissal of Rail Lubricator Maintainer G.J. Gallant ``for violation of General Rule G of the Canadian Rail Operating Rules on 26 June 1991''.

JOINT STATEMENT OF ISSUE:

The Brotherhood contends that: 1. Discipline was issued to the grievor prior to completing investigation in violation of Article 18 of Agreement 10.1. 2. The discipline assessed was unjust and too severe in light of the circumstances. 3. The Company violated the applicable provisions of the ``Memorandum of Agreement Between CN and the Unions Concerning the Application of Uniform Code of Operating Rules 'G' and 'E' '', as well as the ``Union/Management Agreement on the Control of Drug and/or Alcohol Abuse''.

The Brotherhood requests that Mr. Gallant be reinstated with full seniority, and that he be compensated for all lost wages and benefits incurred as a result of this matter.

The Company denies the Brotherhood's contentions and submits that the discipline assessed was appropriate.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(SGD.) R. A. BOWDEN

(SGD.) M. M. BOYLE

SYSTEM FEDERATION GENERAL CHAIRMAN

for: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. C. Gignac

Labour Relations Officer, Montreal

D. C. St. Cyr

Manager, Labour Relations, Montreal

W. C. Werden

Special Agent, CN Police, Hornepayne

T. H. Laks

System Maintenance Engineer, Montreal

R. Bateman

Labour Relations Officer, Toronto

Dr. T. V. Luu

Assistant Director, Medical, Montreal

And on behalf of the Brotherhood:

D. Brown

Counsel, Ottawa

J. Rioux

General Chairman, Grimsby

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond controversy, that the grievor, Mr. G.J. Gallant, did report for work under the influence of alcohol on June 26, 1991, in violation of General Rule G of the Canadian Rail Operating Rules. It is common ground that he was apprehended and reported to the Company by a CN Police Constable.

The Brotherhood relies, in part, on the terms of the ``By-Pass Agreement'' dated May 24, 1990, article 1 of which is as follows:

1.

Employees suspected of having consumed alcohol and/or using drugs while subject to duty or while on duty will not be dismissed on the first occasion if reported by a fellow employee or employees.

It is common ground that the By-Pass Agreement contains no definition of the term ``fellow employee''. It appears from the record that on November 27, 1991 the Joint Senior Advisory Committee on the Union/Management Agreement on the Control of Drug and/or Alcohol Abuse passed a resolution defining the expression ``fellow employee'' as excluding management personnel and CN police officers fulfilling their duties pursuant to the Railway Act. There was, however, no such distinction written into the terms of the By-Pass Agreement or mutually understood by the parties prior to that time. It is not disputed that, in a general sense, CN constables are employees of the Company, to the extent that they are hired, directed, paid, and ultimately subject to being disciplined or discharged by the Company. They are, moreover, expressly denoted as ``employees'' in their capacity as private constables within the terms of section 3(1) of the Canada Labour Code.

In all of the circumstances, at the time of the incident of June 26, 1991, the Arbitrator must find that the CN constable who apprehended the grievor was a ``fellow employee'' within what was then the meaning of that term within the By-Pass Agreement. For the purposes of clarity, that would clearly not be the case at any time after November 27, 1991, if indeed, as of that date, the Senior Advisory Committee duly approved the definition of the term ``fellow employee'' to exclude CN Police officers.

For these reasons the grievance is allowed. The Arbitrator directs that Mr. Gallant be reinstated without loss of seniority, and with compensation for all wages and benefits lost. In the circumstances, it would appear to the Arbitrator that if the remedial order is to place the grievor in the position which he would have been in but for the violation of his rights under the By-Pass Agreement, the Arbitrator being satisfied that the violation of Rule G may have been caused by poor judgement, Mr. Gallant remains liable, at the option of the Company, to be interviewed by Employee Assistance Program personnel in keeping with paragraph 4 of the agreement. Should no abuse problem be found to exist, Mr. Gallant will be subject to the counselling, warning and written record notation contemplated within that provision. Conversely, should it be determined that the grievor has an abuse problem, he may be subject to such other provisions of the agreement as may bear on his circumstances.

June 12, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR