

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2489

Heard in Calgary, Wednesday, 14 June 1994

concerning

Canadian National Railway Company

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS

[BROTHERHOOD OF LOCOMOTIVE ENGINEERS]

DISPUTE:

Appeal the discharge of Locomotive Engineer L.G. Winter or Regina, Saskatchewan for violation of Canadian Rail Operating Rules (CROR) G while employed on the 1600 Yard Assignment on April 15, 1991.

JOINT STATEMENT OF ISSUE:

On April 15, 1991 MTS P. Pellerin overheard Mr. Winter using profane language on the radio. When he confronted Mr. Winter about this, Mr. Pellerin noted a strong odour of alcohol emanating from Mr. Winter. His eyes were noted to be glassy and his speech was slurred. Mr. Winter was then removed from service and Equipment Supervisor R. Thompson was requested to assist Mr. Pellerin in the assessment of Mr. Winter's condition. Mr. Thompson noted the same symptoms and confirmed Mr. Pellerin's evaluation that Mr. Winter was under the influence of alcohol.

An investigation was held on April 19, 1991 following which Mr. Winter was discharged from service on April 22, 1991.

The Brotherhood initially grieved the discharge of Mr. Winter for violation of Rule G because, in their opinion, he had not been afforded a fair and impartial investigation. The Brotherhood now contends that Mr. Winter's violation of CROR General Rule G was the result of his problem with alcohol abuse. Following his discharge, Mr. Winter recognized an addiction to alcohol which led to marital problems, attitude related problems both on and off the job, which culminated in his discharge from the Company. He has since successfully completed the Company's Employee Assistance Program and was being considered for reinstatement.

The Brotherhood requests that Mr. Winter now be reinstated.

The Company has denied the appeal.

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) W. A. Wright (SGD.) B. Laidlaw

General Chairman for: Senior Vice-President, Western Canada

There appeared on behalf of the Company:

G. C. Blundell - Manager, Labour Relations, Edmonton

M. A. King - Solicitor, Edmonton

B. Laidlaw - Labour Relations Officer, Edmonton

R. Pelesh - District Superintendent, Transportation, Saskatoon

R. Hedley - Manager, Special Projects, Edmonton

And on behalf of the Brotherhood:

W. A. Wright- General Chairman, Saskatoon

M. Simpson - Vice-General Chairman, Saskatoon

G. Broda - General Secretary/Treasurer, CGofA, Saskatoon

L. G. Winter- Grievor

AWARD OF THE ARBITRATOR

The Arbitrator can find nothing in record to confirm the suggestion of the Brotherhood that the grievor was in some manner

denied a fair and impartial investigation in relation to the termination of his employment. The thrust of the Brotherhood's submission appears to be, as reflected in its brief, that in fact Mr. Winter did not receive "a fair and impartial hearing with respect to the question of his reinstatement." With respect, the Arbitrator has been directed to no provision of the collective agreement which deals with any procedural requirement to be observed by the Company in the exercise of its discretion, following an employee's discharge, on the issue of reinstatement. In the absence of any such provision, the Arbitrator can see no basis to sustain the Brotherhood's position that there has been a violation of any obligation in that regard.

The issue of substance in this case is whether the Arbitrator should substitute a penalty less than discharge, in light of mitigating factors. The evidence marshaled by the Brotherhood discloses that following Mr. Winter's discharge he took steps to deal with his medical problem of alcoholism. From May 24 to June 24, 1991 he participated in a one month in-patient treatment program in Regina, under the sponsorship of the Saskatchewan Alcohol and Drug Abuse Commission. Since May of 1991 he has attended Alcoholics Anonymous meetings and has abstained from the consumption of alcohol for three years. The documentation provided by the Brotherhood confirms that Mr. Winter has made impressive strides in his personal rehabilitation.

The aggravating factors in the grievor's record are not so significant. While it is true that his disciplinary record, and his record for driving offences and minor criminal matters accumulated in the period prior to his discharge are not impressive, those events appear to be substantially related to his then uncontrolled alcoholism. Nor can the Arbitrator ascribe substantial weight to fact that Mr. Winter had a negative experience in respect of one employer for whom he worked for a period of three days during the course of his period of rehabilitation, a factor which seems to have weighed heavily in the Company's consideration of the Brotherhood's request for his reinstatement.

In the result, the Arbitrator is satisfied that the grievor should be reinstated into his employment, subject to conditions fashioned to protect the interests of the Company. The Arbitrator directs that Mr. Winter be reinstated into his position as a locomotive engineer, without compensation for any wages or benefits lost, and without loss of seniority. The grievor's reinstatement shall be conditional upon his continued participation in the activities of Alcoholics Anonymous, to be confirmed to the Company by an appropriate officer of that organization through documented reports provided quarterly for a period of not less than two years following his reinstatement.

June 21, 1994

MICHEL G. PICHER
ARBITRATOR