

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2610

Heard in Montreal, Thursday, 13 April 1995

concerning

VIA Rail Canada Inc.

and

United Transportation Union

DISPUTE:

Appeal of discharge of G. Tersigni for failure to comply with the requirements of CROR Rule G while employed as an Assistant Conductor on December 14, 1992.

JOINT STATEMENT OF ISSUE:

On December 14, 1992, Mr. G. Tersigni worked as Assistant Conductor on Train No. 70 from Windsor to Toronto. Upon his arrival in Toronto, at approximately 11:00 hours, he attended a medical appointment at Medisys for his periodic VCS&H medical exam.

Upon examination of the grievor, Dr. Woolley detected an odour of alcohol as well as an enlarged liver and elevated pulse rate. Mr. Tersigni refused to consent to a blood test to determine his blood alcohol level and liver function. As a result, Dr. Woolley did not authorize a new medical examination card.

On December 21, 1992 and January 4, 1993, Mr. Tersigni attended a disciplinary investigation and was subsequently discharged effective December 14, 1993.

The Union contends that Mr. Tersigni was not in violation of Rule G while on duty or while subject to duty on December 14, 1992, and request that he be reinstated without loss of seniority or benefits and with compensation for all time lost.

The Corporation disagrees with the Union's contention and has declined its request.

FOR THE UNION:      FOR THE Corporation:

(SGD.) M. P. Gregotski (SGD.) K. Taylor

General Chairperson      for: Department Director, Labour Relations

There appeared on behalf of the Corporation:

K. Taylor      - Senior Advisor & Negotiator, Labour Relations, Montreal

Wm. Radcliffe      - Transportation Officer, Montreal

And on behalf of the Union:

G. J. Binsfeld      - Secretary, GCA, Fort Erie

G. Bird- Vice-General Chairperson, Montreal

P. Gallagher- Vice-General Chairperson, Yard, Fort Erie

R. Long- Vice-General Chairperson, Yard, Hamilton

G. Tersigni - Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator discloses that on December 14, 1992 the grievor worked as an assistant conductor on train no. 70 from Windsor to Toronto. Shortly after his arrival in Toronto he proceeded to a periodic company medical examination conducted by Dr. Brenda A. Woolley. During the course of that examination Dr. Woolley observed that the grievor smelled of alcohol, had an enlarged liver and an elevated pulse rate. When she asked Mr. Tersigni to undergo a blood test to establish his blood alcohol level and liver function, he refused.

Being advised of this information, following a disciplinary investigation the Corporation concluded that the grievor violated Rule G by being under the influence of alcohol while on duty on December 14, 1992. The Arbitrator is satisfied, on the balance of probabilities, that the Corporation's judgment in respect of the grievor's condition on that date and his violation of Rule G is correct. On that basis he was deserving of a serious degree of discipline. The only issue in question is the appropriateness of the penalty of discharge assessed by the employer.

In the case at hand, there are mitigating factors to consider. The grievor is an admitted alcoholic. It is not disputed that he had not acknowledged his condition or taken steps to rehabilitate himself at the time of his discharge by the Corporation. In the months following the termination of his employment, however, Mr. Tersigni made substantial efforts in that regard, the details of which are substantially documented before the Arbitrator.

The evidence discloses that in January of 1994 the grievor commenced a ten day pre-admission process for alcohol treatment at the Windsor Western Hospital Centre under the auspices of the Essex County Addiction Assessment Referral Service. He then entered a twenty-eight day in-patient rehabilitation programme at the Westover Treatment Centre in Thamesville, Ontario, completing the programme on February 4, 1994. It appears that that institution uses a twelve step programme similar to that followed by Alcoholics Anonymous. The documentation before the Arbitrator, including a report from the grievor's after-care counselor, confirms that he has continued to attend, on a regular basis, after-care meetings in the Westover programme. Letters from the grievor's after-care counselor, Mr. Marcel Devos, dated June 13, 1994, September 22, 1994, January 5, 1995 and March 14, 1995, confirm his successful involvement in the follow-up programme and his on-going abstinence from alcohol. Further positive confirmation of the grievor's rehabilitative efforts is reflected in a letter dated March 10, 1995 from Ms. Cheryl H. Huver of the Essex County Addiction Assessment Referral Service who states: "I am completely satisfied that he has complied fully with his addiction treatment plan. In fact, his actions are clear evidence of his sincerity and commitment with regard to any conditions placed on him by his employer over a year ago."

As prior awards have reflected, although alcoholism is an illness and should be treated as such by employers and boards of arbitration, it is nevertheless incumbent upon an alcoholic employee seeking reinstatement into a safety sensitive position to bring clear and convincing evidence of his or her successful rehabilitation, and a prognosis for ongoing control of the employee's condition (see CROA 1954). I am satisfied that in the instant case that standard has been met. The grievor is a long service employee, having been hired by Canadian National Railways in 1972. He has no prior record of disciplinary infractions relating to the consumption of alcohol or violations of rule G. Most significantly, it is not substantially disputed that his involvement with alcohol which precipitated his discharge was the result of his condition as an alcoholic. By his own efforts, over a substantial period of time, the grievor has gained control of that condition, and there is every reason to believe that he will continue to maintain that control in the future. In the circumstances I am satisfied that this is an appropriate case for

a substitution of penalty by the Arbitrator, subject to conditions fashioned to protect the Corporation's interests.

The Arbitrator therefore directs that the grievor be reinstated into his employment forthwith, without compensation or benefits, and without loss of seniority. Mr. Tersigni's reinstatement shall be conditioned upon his accepting to be subject to periodic drug or alcohol testing, to be administered randomly and in a non-abusive fashion, for a period of two years following his reinstatement. During that same period he shall provide to the Corporation quarterly reports from the Westover Treatment Centre or any other similar institution with which he may become involved, confirming his ongoing participation in an active after-care programme.

April 20, 1995 (original signed by)

MICHEL G. PICHER

ARBITRATOR