

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2723

Heard in Montreal, Thursday, 11 April 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION]**

EX PARTE

DISPUTE - COUNCIL:

Discipline assessed to G.C. Trim for conduct unbecoming an employee, resulting from an incident 27 January 1993.

DISPUTE - COMPANY:

Appeal the discipline of 30 demerits and subsequent dismissal of Mr. G.C. Trim for conduct unbecoming an employee on 27 January 1993 at the Best Western Parkway Inn, Richmond Hill, Ontario.

COUNCIL'S STATEMENT OF ISSUE:

On 27 January 1993, an altercation took place between Mr. Trim and a fellow employee in the lobby of the Best Western Parkway Inn, a facility contracted by Canadian National Railways to provide accommodation to CN employees.

Following an investigation which was completed on 25 January 1993, Mr. Trim was assessed 30 demerit marks for conduct unbecoming an employee. This discipline, when added to the 50 demerit marks previously assessed his record, resulted in the grievor's dismissal effective 19 March 1993 for accumulation of demerit marks.

The Union advised that the grievor's record was indicative of someone who had an obvious dependency problem, which was qualified by his past disciplinary record, as well as the Company's Police report.

As the employee was suffering from a dependency illness, the Union requested that the employee be permitted to return to work after he proved that his dependency was under control.

Subsequent to this the grievor attended in-house rehabilitation, and following two years of faithful adherence to abstinence, the grievor was deemed by CN Occupational Health and Services as fit to return to the Company's services.

The Company denied the Union's request.

COMPANY'S STATEMENT OF ISSUE:

On 27 January 1993, an altercation took place between Mr. Trim and a fellow employee in the lobby of the Best Western Parkway Inn, a facility contracted by Canadian National Railways to provide accommodation to CN employees.

Following an investigation which was completed on February 25, 1993, Mr. Trim was assessed 30 demerits for conduct unbecoming an employee. This discipline, when added to the 50 demerit marks previously assessed his record, resulted in the grievor's dismissal effective March 19, 1993 for accumulation of demerit marks.

In the Union's Step III appeal, dated April 21, 1993, the Union grieved that there was no conclusive evidence to support that a physical altercation took place and, in any event, the incident is not Company related. The Union had requested that the 30 demerits be removed from his personal record and suggested that Mr. Trim be issued a warning that this type of conduct will not be tolerated.

The Company declined the Union's appeal.

FOR THE COUNCIL:

(SGD.) W. G. SCARROW
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) A. E. HEFT
FOR: VICE-PRESIDENT, CN EAST

There appeared on behalf of the Company:

J. Vaasjo	– Labour Relations Officer, Toronto
R. Bateman	– Assistant Manger, Labour Relations, Toronto

And on behalf of the Council:

R. J. Long	– Vice-General Chairman, Hamilton
W. G. Scarrow	– General Chairman, Sarnia
T. Secord	– Canadian Legislative Director, Ottawa
M. P. Gregotski	– General Chairman, Fort Erie
J. Trim	– Witness
G. C. Trim	– Grievor

AWARD OF THE ARBITRATOR

The material establishes that the grievor is an alcoholic. Following his termination, with the support of the Union, he pursued a successful program of rehabilitation, including both in-patient and follow-up support. As of the present date, Mr. Trim has remained sober for some two and one-half years.

The Company takes the position that the grievor should not be given a second chance, citing the fact that he was once given the advantage of the By-Pass Agreement in respect of an earlier violation of Rule G. That incident occurred during the period of the grievor's probationary service, in July of 1986. There have been no other efforts involving the Company with respect to Mr. Trim's rehabilitation, although it does appear that he did, on his own, follow a course of in-patient treatment for a period of several weeks in 1990. The Company became aware of that endeavour only after the fact, apparently through the processing of sick leave indemnity claims.

There can be little doubt that the grievor's conduct, while intoxicated, in the altercation which occurred on January 27, 1993 was deserving of a serious degree of discipline. The mitigating factor in the instant case, however, is the documented fact of the grievor's alcoholism, and the undisputed evidence with respect to his successful efforts at rehabilitation over a substantial period of time. In the circumstances the Arbitrator is satisfied that this is an appropriate case for a substitution of penalty.

The grievance is therefore allowed, in part. The grievor shall be reinstated into his employment, without loss of seniority and without compensation. Mr. Trim's reinstatement shall be conditioned upon his accepting to be subject to random testing for alcohol or drug consumption, to be administered non-abusively, for a period of not less than three years from the date of his reinstatement.

April 12, 1996

(signed) MICHEL G. PICHER
ARBITRATOR