

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2746

Heard in Calgary, Thursday, 16 May 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Appeal the Company's decision to assess 30 demerits to Mr. K.R. Hamelin of Edmonton, Alberta for "unsatisfactory work record January 17 to February 18, 1994" and consequently discharged for accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

On February 22, 1994 and March 1, 1994, Mr. Hamelin attended an employee statement regarding his work record for the period from January 17, 1994 and February 18, 1994. Mr. Hamelin was subsequently assessed 30 demerits for "unsatisfactory work record January 17 to February 18, 1994 and discharged for an accumulation of demerit marks.

The Union requests that the grievor's discipline be removed, that he be reinstated with CN Rail and that he be made whole.

The Company maintains that the grievor was appropriately assessed and has declined the Union's request.

FOR THE COUNCIL:

(SGD.) M. G. ELDRIDGE

FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. TORCHIA

FOR: SENIOR VICE-PRESIDENT, CN WEST

There appeared on behalf of the Company:

W. Barber	– Labour Relations Officer, Edmonton
R. Reny	– Labour Relations Officer, Edmonton
S. Blackmore	– Labour Relations Assistant, Edmonton
J. Torchia	– Manager, Labour Relations, Edmonton
J. Dixon	– Labour Relations Officer, Edmonton

And on behalf of the Council:

M. G. Eldridge	– Vice-General Chairman, Edmonton
J. W. Armstrong	– General Chairman, Edmonton
H. Richardson	– Local Chairperson, Calgary
B. Mitchel	– Local Chairperson, Edmonton
K. Hamelin	– Grievor

AWARD OF THE ARBITRATOR

The evidence before the Arbitrator confirms that the grievor was at fault with respect to his work attendance record in the period January 17 to February 1994. It appears that he had previously suffered a thirty day suspension for his poor work record at Calgary. He was then transferred to Edmonton where the events giving rise to this grievance occurred. After a brief period of vacation at Edmonton he was scheduled to return to work. In fact, however, following his return from vacation, which was late, on February 3, 1994, Mr. Hamelin booked sick and missed calls on an almost continuous basis through February 18, 1994. Although he maintains that his problems were due in part to an ankle sprain, and a faulty telephone system at his apartment, I am satisfied, on the balance of probabilities, that he did not make reasonable efforts to provide the level of availability which his employer was entitled to expect from him.

As reflected in the **CROA 2744** and **2745**, Mr. Hamelin, a relatively junior employee, hired in July of 1990, had less than four years' service at the time of these events. His extremely negative attendance record over the entire period was due, it is agreed, to his alcoholism which, it seems, led to three impaired driving convictions before he was hired, and at least one such conviction during his employment with the Company, in January of 1993. As the record in the two prior awards reflects, Mr. Hamelin had been the beneficiary of a patient and progressive approach by the Company, having been afforded leaves of absence for twenty-eight day in-patient treatment programs on two occasions, once in Vancouver and once in Edmonton. He was also given the benefit of a suspension in lieu of demerits and discharge shortly before his move to Edmonton.

The Council now submits that in light of the grievor's rehabilitation since his discharge, which he states has been ongoing since March 28, 1994, owing to his participation in Alcoholics Anonymous and support from the West Coast Alternatives Society in Vancouver, his reinstatement into employment is appropriate. It appears that he has also maintained contact with the Council's EAP representative whose letter, filed in evidence, confirms the fact that he has followed a path of rehabilitation.

Unfortunately, the Arbitrator is left in doubt with respect to the merits of this grievance. Firstly, the grievor is an employee of relatively short service. More significantly, he has had the benefit, on two prior occasions, of leaves of absence, through the Company's EAP, to attend rehabilitation programs, which he did without success. A further aggravating factor is the grievor's relatively extensive pre-employment criminal record, which includes both driving offences and offences such as break and enter. The record discloses that the grievor falsified his original employment application by concealing his criminal convictions.

It is trite to say that each case must be considered on its own merits. While short service alone would not, of itself, be a disqualifying factor, (see **CROA 2723**) all relevant considerations must be weighed in the balance. In the instant case, the very extensive efforts which the Company made, over the years, to assist Mr. Hamelin with his alcohol problem were without success. It followed the fair application of progressive discipline, again without success. Elements of the record also raise concerns as to the candour which the grievor brings to bear. All of these factors lead the Arbitrator to the conclusion that the grievor has not made out a persuasive case for a substitution of penalty, or an order for his reinstatement. As was stated in **SHP-272**, a case between CNR and CAW:

... it is plain that the Company made every effort to give the grievor a second chance to assist him towards rehabilitation. Its obligations in that regard, however, cannot be viewed as indefinite.

For all of the foregoing reasons the grievance must be dismissed.

May 17, 1996

(signed) MICHEL G. PICHER
ARBITRATOR