

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2857

Heard in Calgary, Thursday, 15 May 1997

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

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

DISPUTE:

The dismissal of Conductor D.R. LaFleche and Trainperson K.S. Deacon.

JOINT STATEMENT OF ISSUE:

Conductor D.R. LaFleche and Trainperson K.S. Deacon violated Rule G and failed to be available when ordered for service at Altona, Manitoba, on October 28, 1995, and were subsequently dismissed.

The Council has maintained that neither employee has a past or present alcohol problem and there are mitigating circumstances that should be taken into account in considering reinstatement.

The Council has requested that Conductor D.R. LaFleche and Trainperson K.S. Deacon be reinstated into Company service without loss of seniority and without compensation.

The Company has declined the Council's request.

FOR THE COUNCIL:

(SGD.) L. O. SCHILLACI
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) G. S. SEENEY
FOR: DISTRICT GENERAL MANAGER, MANITOBA DISTRICT

There appeared on behalf of the Company:

R. M. Smith	– Labour Relations Officer, Calgary
R. E. Wilson	– Director, Labour Relations, Calgary
M. E. Keiran	– Manager, Labour Relations, Calgary
G. S. Seeney	– Manager, Labour Relations, Calgary
J. C. Copping	– Labour Relations Officer, Calgary
R. V. Hampel	– Labour Relations Officer, Calgary

And on behalf of the Council:

K. Jeffries	– Vice-General Chairman, Cranbrook
D. Ellickson	– Counsel, Toronto
B. McLafferty	– Vice-General Chairman, Moose Jaw
A. McCormick	– Local Chairman, Winnipeg
D. LaFleche	– Grievor
K. Deacon	– Grievor

AWARD OF THE ARBITRATOR

The record reveals, without controversy, that both Conductor LaFleche and Trainperson Deacon engaged in a substantial bout of drinking at their away from home terminal at Altona, on October 28, 1995. Their escapades were sufficient to cause the local police to detain Mr. Deacon overnight in jail under the **Intoxicated Persons Detention Act**. Mr. LaFleche's condition was such that he fell back to sleep after his wake-up call. I am satisfied that neither employee was fit for duty for the start of their work at or about 07:00 on the morning of October 28, 1995. Significantly, the Arbitrator is left in substantial doubt as to the candour of the grievors who, through their Union, still maintain that neither of them was intoxicated on the night in question. That assertion is simply not credible.

Neither of the grievors can claim long service or a positive disciplinary record. They both entered service in February of 1987. Mr. Deacon had been disciplined on some three occasions, with fifteen demerits and two cautions on his record at the time of the incident. Mr. LaFleche had four prior occasions of discipline, with twenty-five demerits on his record.

It is well settled that violations of rule G are among the most serious disciplinary offences for employees who hold safety sensitive positions in the railway industry. For the reasons related above, I am satisfied that both of the grievors violated rule G. Given the length of their service, their relative lack of candour as to the facts of the case and their prior record, the Arbitrator can see no basis to mitigate or reconsider the penalty assessed (**CROA 2695**).

For the foregoing reasons the grievances must be dismissed.

Dated at Montreal, May 30, 1997

(signed) MICHEL G. PICHER
ARBITRATOR