

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2882

Heard in Montreal, Wednesday, 10 September 1997

concerning

**VIA RAIL CANADA INC.**

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**EX PARTE**

### **DISPUTE:**

Appeal of the dismissal of Locomotive Engineer D.J. Travers for his violation of Rule G.

### **EX PARTE STATEMENT OF ISSUE:**

On November 16, 1996, D.J. Travers was employed as locomotive engineer on VIA Train 85 from Toronto to Sarnia. Outside of London, Ontario, Train 85 was involved in a vehicle crossing accident which was clearly unavoidable. During the investigation of the accident, two police officers requested that Locomotive Engineer D.J. Travers supply a breath sample. Mr. Travers submitted to such a test and registered .045 PPM blood alcohol.

Following an investigation into this matter, the grievor was dismissed for violation of Rule G.

The Brotherhood appealed on the severity of discipline, as the grievor clearly admitted to consuming a considerable amount of alcohol the prior evening and also admitted to having an alcohol problem during his investigation.

The Brotherhood also contends that since his dismissal, Mr. Travers has taken all necessary steps, and then some, to achieve his goal of recovery from alcohol abuse, and has successfully remained alcohol free for over 7 months.

The Brotherhood contends that there are many mitigating factors involved in this matter that give cause to substitute a lesser disciplinary sanction.

The Corporation had declined to alter the discipline imposed.

### **FOR THE BROTHERHOOD:**

**(SGD.) C. HAMILTON**  
**GENERAL CHAIRMAN**

There appeared on behalf of the Company:

E. J. Houlihan	– Senior Officer, Contracts, Montreal
J. C. Grenier	– Consultant

And on behalf of the Brotherhood:

J. C. Morrison	– Counsel, Toronto
R. Dyon	– General Chairman, Toronto
C. Hamilton	– Consultant
M. Wheaton	– Legislative Representative, Toronto

D. J. Travers

– Grievor

### **AWARD OF THE ARBITRATOR**

It is not disputed that Locomotive Engineer Travers was in violation of Rule G. It is admitted that he consumed liquor, and was under its influence while employed in passenger service on VIA train 85 from Toronto to Sarnia on November 16, 1996. His condition was detected only by happenstance, following the investigation of a level crossing accident in which, it is not disputed, he had no culpable involvement. A breathalyser test administered by investigating police officers confirmed that he had .045 PPM blood alcohol some six hours into his tour of duty. That reading, taken with the grievor's own admissions as to his consumption of alcohol on the day previous, leaves little doubt that he reported for duty impaired by alcohol, in clear contravention of rule G.

The only real issue in the case at hand is the appropriate penalty. Mr. Travers is an admitted alcoholic. The record discloses that following his discharge he obtained both in-patient medical treatment for his condition, and, as evidenced by medical documentation tendered in evidence, has been faithful in his participation in a number of follow-up programs, including meetings of Alcoholics Anonymous and group meetings at the Donwood Institute, in Toronto. It is not contested that he has remained sober for a period of some seven months as of the present time.

The Arbitrator appreciates the spirit which motivates the Corporation's policy of "zero tolerance" in respect of violations of Rule G. On the other hand, the preponderant jurisprudence emerging from boards of arbitration in Canada is that alcoholism is a disease, and must be recognised as such for the purposes of industrial relations discipline. Indeed, a degree of tolerance, and indeed reasonable accommodation, in respect of the condition of persons who suffer from alcoholism is an obligation which now befalls employers, unions and arbitrators alike, given the provisions of the **Canadian Human Rights Code**.

The grievor is an employee with twenty-one years of service in railroading, having initially served as a conductor and brakeman from 1976, and subsequently as a locomotive engineer since 1984, with both Canadian National and with the Corporation. He had a clear disciplinary record at the time of the incident, and such discipline as he has received over the years did not involve any violations of rule G. As noted above, he now presents as a person who has admitted his condition as an alcoholic and has taken serious steps to bring that condition under control. In the circumstances, this appears to the Arbitrator to be an appropriate case for a reinstatement of the grievor, on conditions fashioned to protect the employer's legitimate interests.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment, without loss of seniority and without compensation, on condition that he accept the following terms of reinstatement. For the period of two years following his reinstatement the grievor is to attend meetings of Alcoholics Anonymous, or any other similar agency to be agreed upon by the parties, with his attendance to be confirmed in writing to the Corporation by an appropriate officer of the agency, in writing on a quarterly basis. Further, for the same period of time the grievor shall be subject to drug and alcohol testing, to be administered randomly, and in a non-abusive fashion. His failure to pass, or to take such a test, or to observe the other conditions of this order of reinstatement shall be grounds for discharge.

September 15, 1997

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**