

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2966

Heard in Montreal, Wednesday, 15 July 1998

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (UNITED TRANSPORTATION UNION)

DISPUTE:

Appeal of discipline, 30 day suspension, assessed to Conductor G.C. Robbins of Vancouver, British Columbia effective February 20, 1996.

JOINT STATEMENT OF ISSUE:

On February 19, 1996 Mr. G.C. Robbins and a number of other employees were travelling from Vancouver and Kamloops to Gimli, Manitoba for Conductor Locomotive Operator (CLO) Training. On arrival at Winnipeg Mr. Robbins travelled to the Gimli Training Centre in transportation provided by the Company.

On February 20, 1996 the grievor failed to report to his classroom training at 0800. Subsequent to a discussion between Manager B. Sears and Mr. Robbins, the grievor was advised he would be returned to his home terminal at Vancouver. On March 19, 1996 the Company issued a thirty (30) day suspension effective February 20 to March 20, 1996, inclusive, for his conduct on February 19 and 20, 1996 while travelling to the CLO Program in Gimli, Manitoba.

The Union's position is that Mr. Robbins did not consume any alcohol on the dates in question and although the grievor failed to report to his classroom training at 0800, the incident did not warrant any discipline and therefore the Union requests the grievor be fully compensated, without loss of seniority or benefits.

The Company disagrees.

FOR THE COUNCIL: FOR THE COMPANY:

(SGD.) M. G. ELDRIDGE (SGD.) K. MORRIS

<FO>

Transfer interrupted!

OR: GENERAL CHAIRPERSON FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

K. Morris - Labour Relations Officer, Edmonton

S. Blackmore - Labour Relations Officer, Edmonton

And on behalf of the Council:

M. G. Eldridge - Vice-General Chairperson, Edmonton

AWARD OF THE ARBITRATOR

In this grievance the burden is upon the Company to establish, on the balance of probabilities, that the grievor, Conductor G.C. Robbins of Vancouver, engaged in inappropriate conduct and was, in fact, unfit for duty by reason of having slept in on the first morning of his Locomotive Operator (CLO) Training course at Gimli, Manitoba on the morning of February 20, 1996. It is not disputed that Mr. Robbins was among a number of employees from Western Canada who arrived at Gimli late on the night of February 19, 1996. A number of the employees from Vancouver and Kamloops engaged in a late night drinking party, causing them to be inebriated and/or hung over on the morning of the 20th.

It is not disputed that Mr. Robbins overslept on that morning. He denies, however, that he was involved in the drinking party which resulted in disciplinary action against six other employees, including the discharge of one of them. The grievor's evidence, uncontradicted by any evidence of the Company, is that he did not drink on the evening of the 19th, and that he took two doses of cold medication before going to bed, and failed to hear the central wake-up alarm on the morning of the 20th. He states that because of the

medication and the time zone difference between Vancouver and Winnipeg, he overslept.

The only evidence of the Company against Mr. Robbins is that of the supervisors who encountered him in the hallway of the dormitory at approximately 09:10 hours on the morning of the 20th. It is not disputed that the supervisors previously had their hands full in the residence locating and identifying employees who were either inebriated or severely hung over as a result of a late night party which had gone on until approximately 03:00 hours in the room of another employee, Mr. G.S. Waters, of Vancouver. By the account of the grievor, and indeed the report of Manager Bill Sears, the encounter between Mr. Sears and Mr. Robbins lasted only a few seconds, and occurred after Mr. Sears had been dealing with other employees in an unfit condition.

Mr. Robbins denies having had anything to drink the evening prior. His evidence in that regard is corroborated, to some extent, by the testimony of Mr. Waters who, it appears, was present during the course of the partying of the night before. Mr. Waters states that he did not see Mr. Robbins consuming any alcohol. In the circumstances the Arbitrator is satisfied that the Company has not discharged its burden of proof in respect of Mr. Robbins. While it may be understandable that Mr. Sears was disposed to conclude that the grievor was inebriated or hung over, given the state of a number of other employees with whom he had arrived the night before, and who had also overslept, I am compelled to accept the submission of the Council that in fact Mr. Robbins was incorrectly tarred with the same brush, notwithstanding that his only infraction was having overslept.

In the Arbitrator's view the appropriate measure of discipline for Mr. Robbins would have been a reprimand for having failed to attend his initial orientation class in a timely manner. The assessment of a thirty day suspension is not justified in the circumstances. The grievance is therefore allowed, in part. The Arbitrator directs that the grievor's record be amended to reflect a written reprimand for having overslept on the morning of February 20, 1996 at Gimli. The grievor is to be compensated for all wages and benefits lost in respect of the thirty day suspension, which shall be struck from his record.

July 17, 1998 (signed) MICHEL G. PICHER  
ARBITRATOR

#### SUMMARY - CROA 2966

Conductor G.C. Robbins - 30 day suspension - employee sent home from Gimli for drinking and being unable to attend orientation class - employer unable to prove, on balance of probabilities, that grievor attended the party or was late in the morning for other than legitimate reasons - cf CROA 2967, 2968 -

Grievance Allowed

#### KEYWORDS - CROA 2966

Discipline, suspension, conduct, drinking, circumstantial evidence, burden of proof, allowed

BROWN & BEATTY - CROA 2966