

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3117

Heard in Montreal, Tuesday, 13 June 2000

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Claim on behalf of Mr. D. Clarke.

BROTHERHOOD'S STATEMENT OF ISSUE:

By way of Form 104 dated December 1, 1998, the grievor was dismissed from Company service for unbecoming conduct "as evidenced by (his) having a blood alcohol content over .08 while in charge of and while operating a company vehicle, for which (he) did not have authority, and for providing false and misleading information to the Company during (his) investigation by denying that (he was) charged with operating the vehicle while impaired, in Golden, British Columbia, on October 4, 1998". The Brotherhood grieved.

The Union contends that: 1.) The grievor was given authority by his immediate supervisor to use the vehicle in question on the weekend of October 4, 1998; 2.) The grievor did not intend to provide false or misleading information concerning charges that were laid against him; 3.) In view of all of the circumstances of this case, the discipline issued was excessive and unwarranted.

The Union requests that: the grievor be reinstated into Company service forthwith without loss of seniority and with full compensation for all losses incurred as a result of the Company's actions.

The Company denies the Union's contentions and declines the Union's request.

FOR THE BROTHERHOOD:

(SGD.)J. J. KRUK

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

E. J. MacIsaac	- Labour Relations Officer, Calgary
R. M. Andrews	- Manager, Labour Relations, Calgary
D. E. Freeborn	- Labour Relations Officer, Calgary

And on behalf of the Brotherhood:

P. P. Davidson	- Counsel, Ottawa
J. J. Kruk	- System Federation General Chairman, Ottawa
D. W. Brown	- General Counsel, Ottawa

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor was charged with impaired driving while off duty in Golden, British Columbia. The charge was made on October 3, 1998 and the grievor was found guilty of impaired driving and was sentenced to a fine and a one year suspension from driving on December 17, 1998.

It is common ground that the grievor was driving a Company truck at the time of the charges against him. Following an investigation he was discharged for impaired driving, operating a Company truck without proper authority and for providing false information during the course of the Company's investigation.

The evidence before the Arbitrator is somewhat mitigating with respect to what actually transpired. It is common ground that the grievor, being from Newfoundland, did not return to any home residence during the weekend of October 4, 1998, when working with Pacific Steel Gang No. 3 near Kamloops. He was then assigned the functions of "bull cook" for the weekend, part of which involved running errands around Kamloops using the Company's truck. It appears that during the course of the weekend the grievor was requested by a fellow crew member, Mr. Ken Kettle, to give him a lift from Golden to Kamloops so that he could return to work after a scheduled vacation. Mr. Clarke agreed to drive to Golden to pick up Mr. Kettle, apparently without consulting with any member of management about doing so.

The trip to Golden involved several hours' travel, and required Mr. Clarke to stay in Golden overnight. It is not disputed that while in Golden he attended at a bar where he consumed a number of drinks, and was driving from the bar to his overnight accommodation in Golden when he was apprehended by the police, and charged with impaired driving. In the result, as noted above, Mr. Clarke was off duty, and although he was in Golden without direct authorization by the Company, he was at least operating the truck in Golden under a colour of right, believing that it was appropriate for him to utilize the truck to pick up and return Mr. Kettle to Kamloops.

I am also satisfied that the grievor was in some uncertainty as to the precise nature of the charge against him. He was apparently not in possession of the court documents when, during the course of the Company's investigation, he was unable to give a clear answer as to whether he was in fact charged with impaired driving or, alternatively, had simply been removed from the road following a road side breathalyzer test. It does not appear disputed, on the material before the Arbitrator, that in fact the grievor had sent all of the court documentation home to his wife. It does appear, on the balance of probabilities, that he was not entirely clear as to the details of the charges against him when he was questioned by the Company.

On the whole, the Arbitrator is of the view that the incident in question merited a serious degree of discipline, but that the termination of the grievor is a disciplinary outcome which, in the circumstances, merits adjustment by the exercise of the Arbitrator's discretion. While the grievor's employment with the Company has been interrupted on various occasions over the years, his original service dates back to 1977. In the assignments which he has performed

over the years the grievor has never previously attracted any discipline. With respect to the incident of the weekend of October 4, 1998, Mr. Clarke was not on duty when he was charged with impaired driving, albeit he was driving a Company truck. He also believed that he was properly in Golden, B.C. on Company business, picking up a fellow employee for return to Kamloops, albeit he had no specific authorization in that regard.

Taking the Company vehicle to Golden to pick up a fellow employee without advising the Company or asking permission was an error in judgement. However, given the potential for liability to the Company in the event of an accident resulting in personal injury and/or property damage to a third party when the grievor drove after drinking, discharge might well be the appropriate disciplinary response. In this case, given that the grievor is a long standing employee with no prior discipline, a lengthy suspension should serve to bring home the seriousness of his infraction and should have the desired rehabilitative impact. The Arbitrator is satisfied, on the whole, that this case does merit an adjustment of penalty, albeit without compensation.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority, and without compensation for wages and benefits lost.

June 16, 2000

**MICHEL G. PICHER
ARBITRATOR**