CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE No. 878

Heard at Montreal, Thursday, October 15, 1981
Concerning
CANADIAN PACIFIC LIMITED (CP RAIL)
and
UNITED TRANSPORTATION UNION

DISPUTE:

Dismissal of Trainman P. Andersson for violation of Rule "G" of the Uniform Code of Operating Rules at Windsor, Ontario, November 3, 1980.

JOINT STATEMENT OF ISSUE:

Effective November 19, 1980, Trainman P. Andersson, London, Ontario, was discharged for the violation of the Uniform Code of Operating Rules "G" while employed as Trainman at Windsor, Ontario, November 3, 1980.

The Union appealed the discipline on the grounds that:

> (1) Trainman Andersson on account of being booked sick, was not on duty or subject to duty therefore could not have been in violation of Rule "G" U.C.O.R.
>
> (2) The questioning of Trainman Andersson on November 3, 1980, constituted an improper investigation and Trainman Andersson's rights were totally disregarded under the Collective Agreement Article 33, Clauses (a), (b) and (c).

The Union contends that Mr. Andersson should be returned to service with payment for all time lost.

The Company declined the appeal on the basis that the investigation was properly conducted and Trainman Andersson was properly disciplined based on the evidence adduced at the investigation.

FOR THE EMPLOYEES:
(Sgd.) LEO H. BREEN GENERAL CHAIRMAN
There appeared on behalf of the Company:
L. A. Clarke

B. P. Scott
B. F. Dixon
And on behalf of the Employees:
Leo H. Breen
B. Marcolini
J. Austin

FOR THE COMPANY:
(Sgd.) L. A. CLARKE for J. P. KELSALL GENERAL MANAGER OPERATION AND MAINTENANCE
- Supervisor, Labour Relations, CP Rail, Toronto - Labour Relations Officer, CP Rail, Montreal - Assistant Superintendent, CP Rail, Windsor, Ont.
- General Chairman, Eastern & Atlantic Regions, Toronto, UTU
- Vice General Chairman, Eastern & Atlantic Regions, Toronto, UTU
- Secretary, Eastern & Atlantic Regions, Toronto, UTU

AWARD OF THE ARBITRATOR

The grievor was ordered at London at 0200 and departed at 0320 on the day in question. He arrived at Windsor and was off duty at 1005. Crews run first in first out of Windsor, and given his familiarity with the schedule the grievor could have anticipated a call to return to London at 1900 or later.

At 1745, train 942 was ordered for 2000, off shop track at 1945. The conductor of the grievor's crew was called, and accepted the call on behalf of his crew. The conductor, it appears, did not then know the precise whereabouts of the grievor or the engineman.

At 1930, another employee telephoned the Yardmaster with respect to a call. In the course of that conversation, he advised that the grievor and his engineman were with him, and it would have become apparent that they would be late for their call. Shortly thereafter, the grievor and the engineman called the Yardmaster to advise that they were booking sick. The other employee, who participated in that conversation as well, advised that the call was being made from a tavern.

Company officers then drove toward the tavern, and along the way observed the grievor and the others, whose behaviour and manner of walking indicated that they had been drinking. The Company officers insisted that the employees get in the car and return with them to the station. The employees did so, albeit reluctantly. I doubt if this could be said to amount to any form of "false imprisonment" or an infringement on their civil rights, although such questions are

not, as such, before me for determination. Indeed, had the grievor or his companions been genuinely ill, it might well have been irresponsible of the Company officers to have simply left them alone in an away-from-home city.

At the station, Company officers questioned the grievor and the others. Certainly, care must be taken in accepting as evidence statements made in the course of this interview, which was not an investigation within the meaning of the Collective Agreement. That does not, however, affect the validity of observations made by the Company officers at the interview, observations which corroborated the opinion they had formed that the grievor and the others had been drinking. There is, indeed, no doubt that the grievor had been at the tavern and he had done some drinking. The evidence as to his behaviour, his appearance, and the smell of alcohol confirms that he had drunk a considerable amount: more, in any event, than could be permitted in the case of an employee subject to duty.

The grievor was, I find, subject to duty within the meaning of Rule "G" of the Uniform Code of Operating Rules. While he had not in fact received a call, he was aware, or ought to been aware, that a call was imminent. His conductor had, as been noted, accepted a call on his behalf. It is clear, from the circumstances described, that his "booking sick" was simply an attempt to avoid the consequences of the grievor's own misconduct.

The subsequent investigation was not improper. The subject of the investigation - the grievor's behaviour - was properly stated as such. That behaviour was, of course, drinking while subject to duty. The grievor's right to union representation was made clear to him and the proceedings were not unfairly conducted.

In my view, the material before me clearly establishes that the grievor was in violation of Rule "G". The seriousness of this offence, in cases of operating employees, has been referred to in many cases and surely needs no emphasis. There was, I find, just cause for the discharge of the grievor, and the grievance is accordingly dismissed.

J.F.W. WEATHERILL

ARBITRATOR