CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3378

Heard in Montreal, Thursday, 16 October 2003

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
EX PARTE

DISPUTE:
Dismissal of Mr. W. Robinson.

BROTHERHOOD'S STATEMENT OF ISSUE:
On December 31, 2002, the grievor received from the Company a form 104 dated December 30, 2002 that stated that the grievor was dismissed from Company service for "possessing and consuming alcohol in Company boarding cars and being under the influence of alcohol when reporting for [his] normal assignment." The Brotherhood grieved.

The Union contends that: **(1.)** Prior to dismissal, the grievor had a perfect discipline record; **(2.)** The evidence presented by the Company against the grievor was at least circumstantial; **(3.)** The Company was in violation of procedure as outlined in Section 18.3 of Agreement No. 41; **(.)** The discipline assessed the grievor was excessive and unwarranted in the circumstances.

The Union requests that: the grievor be reinstated forthwith, without loss of seniority and with full compensation for all wages and benefits lost as a result of this matter.

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 – Manager, Labour Relations, Calgary
D. Charbonneau – Supervisor
L. Piché – Maintainer
V. Somers – Assistant Foreman
R. Caddorette – Machine Operator

And on behalf of the Brotherhood:
P. Davidson – Counsel, Ottawa
J. J. Kruk – System Federation General Chairman, Ottawa
D. Brown – Sr. Counsel, Ottawa
M. Couture – General Chairman, Eastern Region
W. Robinson – Grievor

AWARD OF THE ARBITRATOR

Upon a thorough review of the evidence the Arbitrator is satisfied that the grievor, Labourer W. Robinson, did present himself for work severely under the influence of alcohol on the evening of October 4, 2002. The evidence before the Arbitrator confirms that at that time Mr. Robinson was observed at close quarters by a number of fellow employees and supervisors who formed the opinion that he was inebriated, and that it would be unsafe for him to work in that condition.

It should be stressed that it is rare for this Office to hear evidence of fellow employees inculpating another employee in an accusation of intoxication on the job. By the same token, when such accusations are made in a credible fashion, they are invariably prompted by genuine concerns as to workplace safety, including possible harm to the inebriated employee himself.

When first confronted by Deputy Supervisor Daniel G. Charbonneau, who noticed a smell of alcohol coming from Mr. Robinson, the grievor denied that he had been drinking and stated that he was willing to undergo a breathalyser or blood

test to prove it. When Mr. Charbonneau took the grievor up on that suggestion, and drove him to a local hospital for a blood test, Mr. Robinson changed his position, asserting that such a test would be contrary to his rights and that, in any event, he had a great fear of needles.

At the arbitration hearing, as well as during the disciplinary investigation, Mr. Robinson suggested that he was the victim of a conspiracy by other employees. He also expressed the alternative theory that others may have erroneously believed that he had consumed alcohol because he had with him a backpack containing empty bottles and cans, including beer bottles and cans, which he had collected from the roadside.

The Arbitrator does not find the testimony of Mr. Robinson to be credible. As noted above, the corroborated evidence of several employees and supervisors placed the grievor in a position which required him to give a credible and compelling explanation for his apparent condition. For reasons touched upon in prior awards of this Office, his initial suggestion of a willingness to undertake a breathalyser or blood test, and his subsequent refusal to carry out that option when his suggestion was taken seriously, leaves him vulnerable to obvious adverse inferences with respect to his true condition.

On the whole I am satisfied that the Company has discharged the onus of establishing that the grievor was intoxicated at the commencement of his tour of duty on October 4, 2002. Given the grievor's obvious refusal to accept responsibility for his actions, and his lack of candour, this is not a circumstance which would justify a substitution of penalty.

The grievance is therefore dismissed.

October 21, 2003

MICHEL G. PICHER
ARBITRATOR