

IN THE MATTER OF AN ARBITRATION

BETWEEN:

BC RAIL

(hereinafter referred to as the "Railway")

AND:

CANADIAN UNION OF TRANSPORTATION EMPLOYEES, LOCAL #1

(hereinafter referred to as the "Union")

(Chris Lawrence Dismissal)

Arbitrator: H. Allan Hope, Q.C.

Counsel for the Employer: Bob Colquhoun

Counsel for the Union: Robert Samson

Place of Hearing: Vancouver, B.C.

Date of Hearing: October 2 and 3, 2000

A W A R D

I - The Dispute

The Grievor, Chris Lawrence, was dismissed from his position as an engineer on May 8, 2000. The position of the Railway was that the conduct of the Grievor at and prior to reporting for duty on April 15, 2000 was deserving of discipline and that dismissal was not an excessive response. On that date the Grievor deadheaded from Prince George to Williams Lake where he was to commence duty as a trainee in the operation of passenger trains. The position of the Railway was that the Grievor was in contravention of CROR General Rule "G". That Rule prohibits the following conduct:

- (a) The use of intoxicants or narcotics by employees subject to duty, or their possession or use while in duty, is prohibited.
- (b) The use of mood altering agents by employees subject to duty, or their possession or use while on duty, is prohibited except as prescribed by a doctor.
- (c) The use of drugs, medication or mood altering agents, including those prescribed by a doctor, which, in any way, will adversely affect their ability to work safely, by employees subject to duty, or on duty, is prohibited.
(emphasis added)

The position of the Railway was that the Grievor was in breach of the Rule in the sense that he had used alcohol during a period when he was subject to duty. The position of the Union was that the Grievor was not in breach of that Rule and, in particular, that he had not used alcohol while he was "subject to

duty". It was the Union's position that the Grievor was not subject to duty while he was deadheading and, in any event, he had not consumed alcohol at any time relevant to when he became subject to duty.

II - The Process

This matter was brought to arbitration in a mediation/arbitration format in which it was agreed that facts developed in the course of the mediation would be facts in the arbitration phase of the process for purposes of resolving the dispute. The Grievor agreed to that process after being fully informed of his rights separately by the Union and in the presence of the Arbitrator and the Railway in the proceedings. In particular, he consented to facts being developed in caucus sessions conducted separately with the parties.

In that process it became apparent that the relevant facts were in conflict as between the parties with respect to the extent to which the Grievor's actions on the day in question were in breach of Rule G. The parties agreed to have the Arbitrator adjudicate on the facts in the arbitration stage of the process and render a decision binding upon them.

III - Decision

In the final analysis, it was apparent the Grievor had consumed alcohol prior to having boarded the train to deadhead to Williams Lake. In dispute was the amount of alcohol and the extent to which the Grievor continued to be under its influence when he was due to report for duty at Williams Lake. However, it is not necessary in order to resolve the dispute that those factual issues be addressed in any determinative sense. On the

facts, it became apparent that the Railway's primary concern was the possibility that the Grievor was experiencing a substance abuse condition which affected his conduct as an employee in terms of his attendance and performance. Based on that conclusion, the following resolution of the dispute is imposed:

- (1) The Grievor will be reinstated without loss of seniority or pension entitlement.
- (2) The Grievor will submit to an examination by a qualified specialist in Occupational Medicine to determine if he has a condition with respect to substance abuse. The specialist will be selected by the parties by agreement and, failing agreement, will be appointed by the Arbitrator.
- (3) In the event the Grievor is found to have a substance abuse condition, he will submit to the Railway's Discipline Bypass Policy.
- (4) In the event the Grievor is found not have a substance abuse condition, he will be returned to service.
- (5) In recognition of the Grievor's loss of income occasioned by the question of whether he had a substance abuse condition, he will be compensated in the amount of \$6500.

It is recognized by both parties that breaches of Rule G can have extremely serious consequences and, while breaches of the Rule must be measured in light of the particular circumstances, any breach is seen as serious misconduct that will invite dismissal as a consequence. Conversely, both parties acknowledge that substance abuse is recognized as a disabling condition that invites treatment under the Railway's employee assistance program.

In the context of those realities of the workplace, the Union can

expect that the Railway will provide employees with the support available under the employee assistance program and, conversely, the Railway is entitled to expect that employees who believe they are vulnerable to substance abuse will seek out assistance and will avoid compromising safety and their continued employment by coming forward to seek help when they know or believe it may be required.

In this dispute the appropriate determination is to have the Grievor's susceptibility to substance abuse evaluated, to have him submit to a treatment program if that is deemed necessary, and, in any event, to offer him the opportunity to recover the confidence of the Railway in his commitment to the standards that govern engineers in what is admittedly a safety sensitive aspect of the industry. On that basis, the grievance is granted in part on the terms outlined above.

DATED at the City of Prince George, in the Province of British Columbia, this 21st day of February, 2001.

H. ALLAN HOPE, Q.C. - Arbitrator