

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION**

**CASE NO. 4705**

Heard in Montreal, October 11, 2019

Concerning

**CANADIAN PACIFIC RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE  
MAINTENANCE OF WAY EMPLOYEES DIVISION**

**DISPUTE:**

Dismissal of Mr. D. Unrau.

**JOINT STATEMENT OF ISSUE:**

On November 23, 2018, the grievor, Mr. Darnell Unrau was issued a Form 104 advising him that he was being dismissed for his alleged "possession of alcohol in a CP supplied motel room in Thunder Bay, ON, on October 19, 2018". A grievance was filed.

**Union Position:**

The investigation conducted into the grievor's case was not fair and impartial in violation of section 15.1 of the Collective agreement.

The grievor neither possessed nor consumed alcohol in his room, and the Company has failed to meet its burden of proving that he did so.

The discipline assessed was excessive, unwarranted and not in keeping with the principles of progressive discipline.

The Union requests that the Company be ordered to reinstate the grievor immediately without loss of seniority and with full compensation for all wages and benefits lost as a result of this matter.

**Company Position:**

The Company maintains that the investigation of the grievor was conducted in a fair and impartial manner and no violation of the Collective Agreement occurred.

The grievor was culpable for the incident and was in violation of the Hotel/Motel Camp Rules, HS 203.1 and the Rule Book for Engineering Employees.

The discipline assessed was reasonable in all the circumstances and was keeping with the principles of progressive discipline.

**FOR THE UNION:**  
**(SGD.) G. Doherty**  
President

**FOR THE COMPANY:**  
**(SGD.) W. McMillan**  
Manager, Labour Relations

There appeared on behalf of the Company:

- D. Pezzaniti – Assistant Director, Labour Relations, Calgary
- M. Smyth – Counsel, Hicks Morely, Toronto

And on behalf of the Union:

- G. Doherty – President, Ottawa
- H. Helfenbein – Vice-President, Medicine Hat
- D. Brown – Counsel, Ottawa

### **AWARD OF THE ARBITRATOR**

The grievor, a Machine Operator Group 3, was hired by the Company on May 1, 2017. He was discharged on November 26, 2018 for:

Being in possession of alcohol in a CP supplied motel room in Thunder Bay, ON, on October 19, 2018. --- A violation of Policy HR 203-1, System Motel Camp Rules, and SPC 41 M/W Rules and Instructions.

The grievor had been provided with single occupancy accommodation further to article 12-9(b) of the collective agreement, which provides in part as follows:

When direct billed accommodation is provided by the Company it shall be single occupancy accommodation. The Company further agrees that every employee may, in lieu of single occupancy accommodation, and at his or her sole discretion, choose to receive the Per Diem amount set out in 12.9(b) of the Agreement No. 41.

The grievor chose to allow a fellow employee to stay in the room which had been provided for him. The grievor himself remained responsible for the room and for adherence to the rules and policies of which he was aware regarding the possession or consumption of alcohol in such circumstances. Alcohol was discovered in the room by a supervisor who had escorted the other employee back to the room following testing for alcohol. The supervisor found a number of cans of beer, some open, some full, in various parts of the room. Photographs show many of them clearly observable.

The grievor, while acknowledging that the photographs show there was beer in the room, denies consumption of any, and denies seeing any. Asked at his investigation whether he saw that there was beer “all over the room”, he replied (A.35):

*Never even noticed. I never looked. I didn't see nothing.*

That response, in my view, stains credulity. From all the material before me, and on the balance of probabilities, I find that the grievor was in possession of alcohol in Company-supplied accommodation in violation of the rules and instructions cited and would be subject to discipline on that account.

The Union contends that the grievor was not given a fair and impartial investigation as required by the collective agreement. This contention is based partly on the refusal of a Union request for a recess, and partly on the alleged bias of the investigating officer as shown by his “overruling” certain objections. As to refusal of a recess, the recess was refused because the witness had not answered a question. A party does not have a right to a recess whenever it chooses. The refusal of that request for a recess was perfectly reasonable, and in fact a recess was granted shortly thereafter. As to the investigating officer’s language, in saying, for example, “I think my line of questioning is appropriate”, that cannot reasonably be interpreted as an expression of bias, but is simply a statement of the procedural conclusion reached by the officer whose duty it is to conduct the investigation.

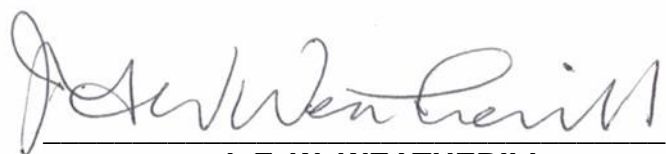
It remains to be determined whether the discipline imposed – discharge – was within the range of reasonable disciplinary responses to the situation. In **CROA 2969**, an

employee of thirty-five years' service was found to have a quantity of marijuana and other drugs in his room, "albeit possessed by other persons". In that case a substantial suspension and strict conditions were imposed, the grievor being reinstated without compensation. In **CROA 3377**, an employee of twenty years' service "with a stellar discipline record" was discharged for possession of illegal drugs and alcohol on Company property. The discharge was upheld.

In the instant case, while the Union argues the Company did not follow progressive discipline, the fact is that in his brief period of service the grievor had been subject to formal discipline on two previous occasions, including a 10-day suspension for a similar offence just five months previously.

In all of these circumstances, I conclude there was just cause for the discharge of the grievor and the grievance is dismissed.

November 29, 2019



**J. F. W. WEATHERILL**  
**ARBITRATOR**