CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 129

Heard at Montreal, Wednesday, October 9th, 1968

Concerning

CANADIAN NATIONAL RAILWAYS

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood claims that the Company wrongfully and unjustly disciplined Bartender G. Daris on July 15, 1968 and that Mr. Daris be paid for the wages lost by him during the two weeks' suspension.

JOINT STATEMENT OF ISSUE:

On the evening of Saturday, July 13, 1968, Mr. Daris was informed by Assistant Manager, Mr. S.E. Bryant, that a complaint had been made by four guests of the Hotel to the effect that they had been insulted by him when they paid their bar check by saying in their hearing: "The last of the big-time spenders."

Mr. Daris was advised to leave the premises of the Cock and Lion Cocktail Lounge, Chateau Laurier, and report for investigation to the Assistant Manager, Personnel, at 10 a.m., Monday, July 15.

The Brotherhood protested the Company's action, contending that Mr. Daris was unjustly disciplined and requested that he be reinstated forthwith and paid for time lost.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) J. R. GREALY	(Sgd.) E. K. HOUSE
ACCREDITED REPRESENTATIVE	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

W R. Freeborn	– Labour Relations Assistant, Montreal
B. Turner	– Labour Relations Supervisor, CNR Hotels, Montreal
M. F. Craston	– Assistant General Manager, CNR Hotels, Montreal
S. E. Bryant	– Assistant Manager, Chateau Laurier Hotel, Ottawa
L. Monfils	– Assistant Manager Personnel, Chateau Laurier Hotel

And on behalf of the Brotherhood:

J. R. Grealy	– Accredited Representative, Ottawa
J. A. Levia	– Accredited Representative, Ottawa
L. St. Pierre	– Local Chairman, Ottawa
P. E. Jutras	– Regional Vice-President, Montreal
N. Chenier	– Witness
G. Danis	– Grievor

AWARD OF THE ARBITRATOR

At the beginning of the hearing of this matter Mr Grealy, for the union, moved that the company should proceed first, since this was a case involving the discipline of an employee. Mr. Grealy referred to a number of recent arbitration cases in which such a ruling has been made. In the cases presented to the Canadian Railway Office of Arbitration the parties have traditionally proceeded by presenting briefs and attached exhibits, and the party bringing the grievance has proceeded first. In the instant case, I ruled that the union should present its brief first, in the usual way. The order of presentation of briefs does not affect the onus upon the company to show that it had just cause for the discipline imposed on the grievor.

Following the presentation of briefs, it was agreed that in fact the complaint, set out in the joint statement of issue, was made. Indeed, the union does not deny that the grievor in fact uttered the words in question. The issue is whether, in uttering those words in the circumstances which gave rise to this case, he committed an offence for which his two-week suspension was an appropriate penalty. The union called as witnesses the grievor and two fellow employees, and the company then called evidence in reply.

The grievor, a waiter in the Cock and Lion Cocktail Lounge in the Chateau Laurier Hotel, and an employee of some twenty-one years' seniority, was on duty in the lounge on Saturday, July 13, 1968. He engaged in some conversation with two waitresses concerning a record album which one of them had recently purchased. It was an album of songs sung by Peggy Lee, and the title of the album (which was shown to me at the hearing) was "Big Spenders". The waitress had forgotten the precise title, and the others, it seems were suggesting various possibilities. This conversation took place at the end of the bar, at the area where drinks were served to the waiters and waitresses to be taken to the tables. While the conversation was continuing, the grievor went to collect the payment which some customers had made for their drinks. The grievor had not served these customers, but it seems it was convenient for him to take payment and bring them their change. The customers left no tip. As he returned from the customers' table, he made the suggestion to the waitresses that the title of the record might be "the last of the big spenders". It was the evidence of one of the waitresses that the grievor said this when he was at the bar, about twenty feet from the customers. The customers overheard his words, and apparently took offence. Ultimately, they complained and the management, after investigation, imposed the penalty now complained of.

There is some conflict in the evidence regarding the matter of the record title, since on the company's evidence, no mention of this was made by the employees when the matter was investigated. I do not find it necessary to make any determination of this, and am prepared to accept the sworn testimony of the union's witnesses for the purpose of deciding the question before me.

It is acknowledged that the words were in fact spoken by the grievor and there can be no doubt that they were overheard by the customers. It is obvious that words such as these would be offensive to the customers. This would be true in any case where food or drinks are served, but is especially so in a lounge such as the Cock and Lion. It is quite understandable that the customers' failure to leave a tip would annoy the grievor; very likely it was this which suggested the sarcastic phrase "last of the big spenders" to him – nothing could be more natural. If the grievor had deliberately addressed these words to the customers there would be no doubt as to his offence. But there is no substantial difference where he either mutters it to himself (although loudly enough to be heard), or addresses it to others. Where such words are spoken in the hearing of customers who have just paid their bill leaving a small tip, or no tip, they are just as insulting as words addressed directly to them. It is no excuse whatever to say that the words were addressed to others, or that they had reference only to a record title, and not to the customers' tipping practices. They were spoken in a cocktail lounge, at the time of payment, and in the hearing of the customers. It is difficult to believe that the grievor was not prompted to this remark by the absence of a tip. Even if he thought that the customers would not overhear, it is clear that he was completely careless of his words. It was misconduct going to the very essence of his employment and there can be no doubt that discipline was properly imposed.

The issue in a case such as this is whether the company had just cause to impose the particular penalty involved, in this case a two-week suspension. Rudeness to customers, whether deliberate or careless, is, as I have indicated, a most serious offence in the service occupation. Thus, although a two-week suspension is a severe penalty, I cannot say that it went beyond the range of reasonable disciplinary responses to the situation.

Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR