

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1756

Heard at Montreal, Thursday, 11 February 1988

Concerning

CANADIAN NATIONAL RAILWAY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Dismissal of Yardmaster B.W. Colwell, MacMillan Yard, 25 October 1983 for violation of UCOR Rule 'G'.

JOINT STATEMENT OF ISSUE:

Yardmaster B.W. Colwell was dismissed from the Company's service effective 25 October 1983 for "violation of General Rule 'G' Uniform Code of Operating Rules while employed as Yardmaster at East Control, MacMillan Yard, Tuesday, October 25, 1983."

The Union appealed the dismissal on the basis that certain mitigating circumstances should be taken into consideration and has requested Yardmaster Colwell be reinstated with full seniority and benefits. The Company has declined the Union's appeal.

FOR THE UNION:

(SGD.) W. G. SCARROW
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. Glazer	– Counsel, Montreal
J. B. Bart	– Manager Labour Relations, Montreal
A. E. Heft	– Labour Relations Officer, Montreal
D. Lussier	– System Transportation Office, Montreal
J. Ryan	– Trainmaster, Hornepayne
J. Pasteris	– Labour Relations Officer, Montreal

And on behalf of the Union:

M. Church	– Counsel, Toronto
W. G. Scarrow	– General Chairman, Sarnia
G. Glidden	– Local Chairman, Toronto
P. G. Gallagher	– Secretary GC of A, Niagara Falls
B. Marcolini	– Vice-President, Ottawa
B. W. Colwell	– Grievor

AWARD OF THE ARBITRATOR

It is admitted that the grievor was found in possession of a small quantity of drugs, including marijuana, while at work on October 25, 1983. The material further establishes that at that time the grievor was suffering from a number of personal problems and had become drug dependent. The Arbitrator is satisfied that in the circumstances Mr. Colwell violated Rule G and the Company had cause for the termination of his employment. The sole issue is whether the Arbitrator should exercise his discretion to reduce the penalty in light of certain mitigating factors.

It is not disputed that at the present time Mr. Colwell has been drug free for some four and a half years. Immediately following his termination he sought professional assistance and successfully pursued a number of drug rehabilitation programs. He has also been involved in work as a counsellor in assisting others with drug related problems. In the time since his discharge, Mr. Colwell has held other employment, as a result of which he has been given extremely positive letters of appraisal and recommendation.

In the circumstances of this case the Arbitrator sees no reason why Mr. Colwell, an employee of fifteen years' service with a clear disciplinary record at the time of his discharge, should not be reinstated into his employment on conditions that will provide a reasonable measure of protection to the Company's interests. The Arbitrator therefore orders that the grievor be reinstated forthwith into his employment, without compensation or benefits and without loss of seniority. The grievor's reinstatement is conditioned upon his willingness to be subject to successfully undergoing drug tests administered by the Company, on a quarterly basis, for a period of not less than three years from the date of his reinstatement.

The Arbitrator retains jurisdiction in the event of any dispute respecting the interpretation or implementation of this award.

(signed) MICHEL G. PICHER
ARBITRATOR