

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2001

Heard at Montreal, Tuesday, 13 March 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Discipline assessed D.P. Redgrift, Trainman, at Fort Erie, Ontario for failure to protect assignments between 5 November 1986 and 18 January 1987.

JOINT STATEMENT OF ISSUE:

Effective 18 January 1987, Mr. D.P. Redgrift, Trainman, at Fort Erie, Ontario was assessed 20 demerits for failure to properly protect his assignment between 5 November 1986 and 18 January 1987 and consequently he was discharged for accumulation of demerit marks.

The Union contends the discipline assessed is discriminatory and in any event too severe. The Union requests that the discipline be removed and the grievor be reinstated.

The Company has declined the request.

FOR THE UNION:

(SGD) T. G. HODGES
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD) M. DELGRECO
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

M. S. Hughes – Labour Relations Officer, Montreal
S. F. McConville – Labour Relations Officer, Montreal
J. B. Bart – Manager, Labour Relations, Montreal

And on behalf of the Union:

M. Gregotski – Vice-General Chairman, St. Catharines
R. Kazakoff – Vice-Local Chairman, Fort Erie
D. P. Redgrift – Grievor

AWARD OF THE ARBITRATOR

The material discloses that the grievor is an alcoholic. It is common ground that his condition contributed to repeated attendance problems which resulted in the imposition of discipline on five separate occasions between 1983 and his termination. He was finally assessed 20 demerits for failure to properly protect his assignment on the Fort Erie spareboard between November 5, 1986 and January 18, 1987. That penalty brought his disciplinary record to a total of seventy demerits, resulting in his discharge.

The material before the Arbitrator discloses that for a number of years the Company was aware that the grievor had a problem with alcohol and attempted, without success, to have him get help through its Employee Assistance Program. Mr. Redgrift did not acknowledge his problem with alcohol until he finally faced discharge for attendance problems in June of 1986. He was then allowed to attend a four week in-patient program for chemical dependency at the Bry-Lin Hospital in Buffalo, through the sponsorship of the Company's Employee Assistance Program. Unfortunately, however, not long after his discharge he returned to drinking, and his problems with attendance reasserted themselves.

The Company submits that this is not a case where the grievor has demonstrated voluntary efforts at rehabilitation, such as to justify his reinstatement into employment. Drawing comparisons to a number of prior awards, including **CROA 1295, 1604, 1645 and 1917**, its spokesperson emphasizes the apparent failure of the grievor to respond to the rehabilitation opportunities extended to him by the Company. She stresses in particular that even in the period immediately following his discharge he made no effort to bring his drinking problem under control.

The employer's concerns are understandable. As recently as September of 1989, more than two and one half years following his discharge, Mr. Redgrift had not achieved any substantial degree of rehabilitation from his problem with alcohol. As of the date of this hearing, however, and over the period of the last six months, the grievor appears to have made substantial strides in bringing his alcohol problem under control. It is not disputed that he voluntarily admitted himself once again to the chemical dependency treatment program of the Bry-Lin Hospital in Buffalo from September 7 to October 7, 1989. Documents tendered in evidence confirm that from that time to the present he has faithfully attended follow-up meetings of Alcoholics Anonymous, both in Fort Erie and in North Bay, where he now lives. In other words, albeit belatedly, the grievor now comes before the Arbitrator with documented evidence establishing that he has gained a degree of control of his medical condition and has demonstrated a meaningful commitment to maintaining his follow-up program and sustaining his rehabilitation.

The material before me discloses that the grievor is a long term employee, first hired in 1974. There does not appear to be any dispute that his work, apart from his timekeeping difficulties, has been satisfactory, and that his attendance problems in the past have all been related to his medical condition as an alcoholic. Given that background, and especially in light of the documented evidence of the grievor's own recent efforts at remaining free of alcohol dependence, I am satisfied that this is an appropriate case for reinstatement, on terms and conditions that will protect the legitimate interests of the employer.

For the foregoing reasons the grievance is allowed, in part. Mr. Redgrift shall be reinstated into his employment, without compensation or benefits, and without loss of seniority. His reinstatement is conditional upon his remaining fully abstinent from alcohol. As a condition of reinstatement he must agree to submit to testing for drugs or alcohol on demand at any time, upon the request of an officer of the Company, for a period of not less than three years from the date of his reinstatement. Failure to submit to such a test, or to successfully pass it, will be grounds for his discharge. Additionally, Mr. Redgrift's reinstatement is conditional upon his providing to the Company, on a quarterly basis, documentation from both his personal physician and a responsible officer of an organization such as Alcoholics Anonymous, attesting to his freedom from alcohol dependency and regular participation in a recognized follow-up or support program, for a period of not less than three years from the time of his reinstatement.

March 16, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR