

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2038

Heard at Montreal, Thursday, 14 June 1990

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

The dismissal of Locomotive Engineer D.N. Davis, Lethbridge, Alberta, on September 12, 1988, for "conduct incompatible with your employment as evidenced by your involvement with the possession and cultivation of marijuana".

JOINT STATEMENT OF ISSUE:

Following an investigation on September 7, 1988, Locomotive Engineer Davis was dismissed from the employ of CP Rail.

The Brotherhood appealed the dismissal of Locomotive Engineer Davis and requested his reinstatement without compensation.

The Company has declined the Brotherhood's appeal and refuses to reinstate Mr. Davis.

FOR THE BROTHERHOOD:

(SGD) T. G. HUCKER
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) J. M. WHITE
GENERAL MANAGER, OPERATION & MAINTENANCE, HHS

There appeared on behalf of the Company:

D. A. Lypka – Unit Manager, Labour Relations, HHS, Vancouver
K. E. Webb – Labour Relations Officer, Vancouver
B. P. Scott – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

T. G. Hucker – General Chairman, Calgary
B. Marcolini – National Vice-President, UTU, Ottawa

AWARD OF THE ARBITRATOR

The grievor is a locomotive engineer. Like an airline pilot and others employed in the transportation industry, he serves the Company in a highly safety sensitive position. The material establishes beyond controversy that Mr. Davis produced marijuana in his home by the cultivation of plants. On August 16, 1988, upon the execution of a search warrant, the Royal Canadian Mounted Police found him to be in possession of marijuana plants with a dry weight of three pounds, as well as specialized growing apparatus, including plant lights. He was subsequently convicted and sentenced to an eighty-nine day prison term both for growing the marijuana and for being in possession of marijuana for the purposes of trafficking.

The grievor was discharged for conduct incompatible with his employment as a locomotive engineer. The parties before the Arbitrator do not dispute that the circumstances disclose a dismissable offense, the sole issue being whether the Arbitrator should exercise his discretion, upon compassionate grounds, to reinstate the grievor into his employment without compensation.

I can find no reason to do so. When a person charged with the principal responsibility for the safe movement of trains is found to be involved in the production and sale of a prohibited drug, resulting in his conviction of a criminal offense on that account, an employer in the position of a railway is entitled to take such reasonable actions as are necessary to protect its reputation, as well as the perceived safety of its employees, its equipment, and the public at large. (*See CROA 1703.*) The grievor is not a long service employee. Moreover, the evidence does not establish, in the Arbitrator's view, that he was drug dependent or that his activities were beyond his ability to control. (*See CROA 1954.*) Nor did he have a clear disciplinary record at the time of the incident. On the whole I can see no reason to disturb the Company's conclusion that Mr. Davis' activities were incompatible with his employment as a locomotive engineer, or that penalty short of discharge is appropriate.

For the foregoing reasons the grievance is dismissed.

June 15, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR