

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2429

Heard in Montreal, Wednesday, 15 December 1993

concerning

CANADIAN PACIFIC LIMITED

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION]**

DISPUTE:

Dismissal of Mr. J. S. Horn, Medicine Hat, Alberta.

JOINT STATEMENT OF ISSUE:

August 19, 1991, Trainperson J.S. Horn was dismissed for conduct incompatible with his employment as evidenced by his involvement with the possession and trafficking of narcotics (marijuana), Medicine Hat, Alberta, July 18, 1991.

The Union contends that Mr. Horn's efforts at rehabilitation of what was apparently a serious drug problem warrant his reinstatement into Company service.

The Company has declined the request.

FOR THE UNION:

(SGD.) L. O. SCHILLACI
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. WILSON
for: GENERAL MANAGER, OPERATIONS & MAINTENANCE, HHS

There appeared on behalf of the Company:

R. E. Wilson	– Labour Relations Officer, Vancouver
R. Hunt	– Labour Relations Officer, Montreal
B. Scott	– Labour Relations Officer, Montreal
R. M. Andrews	– Labour Relations Officer, Vancouver

And on behalf of the Union:

L. O. Schillaci	– General Chairperson
J. K. Jeffries	– Local Chairperson, Cranbrook

AWARD OF THE ARBITRATOR

The material before the Arbitrator discloses, beyond controversy, that the grievor, Trainman J.S. Horn, was heavily involved in both the use and sale of narcotics, in particular marijuana, in Medicine Hat. His arrest by the Medicine Hat City Police, in conjunction with CP Police, led to his conviction and subsequent incarceration. The position of the Company is that so heavy an involvement in the drug culture is incompatible with employment in a safety sensitive position involving the movement of trains, and Mr. Horn was subsequently discharged.

The grievor is not a long service employee. While the Union has made an eloquent plea with respect to his rehabilitation following the serving of his sentence, the Arbitrator is left with little grounds, other than compassion alone, to justify the reinstatement of the grievor in such a circumstance. Involvement with drugs, and in particular trafficking, has been consistently recognized by this Office as a serious concern for an employer responsible for the movement of trains, particularly when such conduct involves a running trades employee (*e.g.*, ***CROA 1476, 1703, 2038, 2039, 2090 & 2416***). Similar conclusions have also been drawn in cases concerning employees from other trades within the railway industry (*e.g.* ***CROA 2172, 2238 & 2296***).

While the Arbitrator is not without sympathy for the grievor, and for the arguments advanced on his behalf by the Union, weight must also be given to the considerations which motivate the Company. Among them is a recognition that drug related offences must be treated, and be seen to be treated, as extremely serious. The deterrent effect of the Company's decisions, as it might influence other employees, is not without consequence. In the case at hand it is a legitimate consideration which outweighs the mitigating factors argued by the Union.

For all of the foregoing reasons the grievance must be dismissed.

17 December 1993

(sgd.) MICHEL G. PICHER
ARBITRATOR