

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2439

Heard in Montreal, Tuesday, 11 January 1994

concerning

### CANADIAN PACIFIC LIMITED

and

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

#### **DISPUTE:**

Dismissal of Trainperson K.J. Shannon, Winnipeg, Manitoba, November 19, 1991.

#### **JOINT STATEMENT OF ISSUE:**

On November 4, 1991, Mr. Shannon's record was debited with 20 demerits for failing to report for duty after accepting a call for Train 471 on August 17, 1991. This assessment, coupled with the 50 demerits already on his record, resulted in the grievor's record exceeding 60 demerit marks. Mr. Shannon was offered the opportunity to forego dismissal, however, in accordance with the Memorandum of Discipline. The grievor elected to defer the assessment of discipline in a letter dated November 4, 1991.

Trainperson Shannon was again investigated, and assessed a further 20 demerits for failing to report for duty after accepting a proper call for Train No. 341 on October 25, 1991. As the grievor's record then stood at 90 demerit marks, he was dismissed for the accumulation of demerit marks under the Brown System of Discipline on November 19, 1991.

The Union contends that Trainperson Shannon's chronic absenteeism was resultant from personal problems both with his family and with a drug abuse problem. Trainperson Shannon took positive steps towards rehabilitation of his drug abuse problem and his family problems as well have been eliminated and, therefore, the Union has requested that the Company reinstate Trainperson Shannon to Company service on the basis that he be enrolled in the Employee Assistance Program and on compassionate grounds.

The Company has refused that request and denied reinstatement.

#### **FOR THE UNION:**

**(SGD.) L. O. SCHILLACI**  
GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) M. E. KEIRAN**  
for: GENERAL MANAGER, OPERATIONS & MAINTENANCE, HHS

There appeared on behalf of the Company:

R. Wilson – Manager, Labour Relations, Vancouver  
R. Hunt – Labour Relations Officer, Montreal

And on behalf of the Union:

L. O. Schillaci – General Chairperson, Calgary  
T. G. Hucker – National Vice-President, BLE, Ottawa

#### **AWARD OF THE ARBITRATOR**

The reasons which motivate the Company's decision for terminating Mr. Shannon are amply reflected in the record before the Arbitrator. An employee of ten years' service, he had a substantial disciplinary record, the greater

portion of which related to timekeeping and absenteeism. If that were the totality of the record, there would be little reason to consider a substitution of penalty.

There are, however, mitigating factors brought forward by Mr. Shannon's union representative. Firstly, it is not disputed that Mr. Shannon's family circumstances, and in particular the medical condition of his then spouse, created a burden of substantial stress. It is further disclosed, although this was not communicated to the Company at the time of the discharge, that Mr. Shannon was drug dependent. Documentation before the Arbitrator establishes, beyond controversy, that following his discharge Mr. Shannon completed the rehabilitation program of the Addictions Foundation of Manitoba, and has continued to participate in recovery meetings of Narcotics Anonymous. In the result the Arbitrator is satisfied that the circumstances justify a conditional order of reinstatement.

The Arbitrator directs that the grievor be reinstated into his employment, with the twenty demerits assessed for the failure to report for duty on October 25, 1991 to be removed from his record. He shall remain subject to the deferred assessment of discipline established in the letter of November 4, 1991. He shall further be subject, for a period of two years from the date of his reinstatement, to periodic drug testing on a random, and non-abusive, basis, at the discretion of the Company. He shall also maintain, for the same period of time, participation in the meetings of Narcotics Anonymous, with his attendance at such meetings to be confirmed to the Company, in writing, by an appropriate officer of that organization on a quarterly basis.

14 January 1994

**(sgd.) MICHEL G. PICHER**  
ARBITRATOR