

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2531

Heard in Montreal, Tuesday, 11 October 1994

concerning

**CANADIAN PACIFIC LIMITED**

and

**TRANSPORTATION COMMUNICATIONS UNION**

### **DISPUTE:**

Dismissal of Employee Mr. R. MacLeod, Crew Bus Driver, Thunder Bay, Ontario for consuming alcohol while subject to duty and for reporting for duty and operating a Company vehicle while under the influence of alcohol at Thunder Bay, Ontario, February 5, 1993.

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

Investigations were held on February 19 and March 8, 1993, in connection with Mr. R. MacLeod's failure to remain abstinent contrary to the requirements of his enrollment in the Company's Alcohol and Drug Abuse Program.

Subsequent to these investigations, Mr. R. MacLeod, #424175, seniority date June 14, 1971, was dismissed for consuming alcohol while subject to duty and for reporting for duty and operating a Company vehicle while under the influence of alcohol at Thunder Bay, Ontario, February 5, 1993.

The Union grieved the matter of dismissal as being excessive and requested that Mr. MacLeod be returned to service without loss of seniority and with full compensation for lost wages.

The Company has declined the Union's grievance.

### **FOR THE UNION:**

**(SGD.) D. J. KENT**

for: EXECUTIVE VICE-PRESIDENT

### **FOR THE COMPANY:**

**(SGD.) C. M. GRAHAM**

for: GENERAL MANAGER, OPERATION & MAINTENANCE, HHS

There appeared on behalf of the Company:

C. M. Graham – Labour Relations Officer, Industrial Relations, Montreal  
D. J. David – Labour Relations Officer, Industrial Relations, Montreal

And on behalf of the Union:

D. Deveau – Executive Vice-President, Montreal  
D. J. Kent – Divisional Vice-President, Calgary  
R. B. MacLeod – Grievor

### AWARD OF THE ARBITRATOR

The facts in the case at hand are not disputed. It is admitted that on February 5, 1993 the grievor, Mr. R.B. MacLeod, was impaired while performing his work as a crew bus driver at Thunder Bay. It is further agreed that Mr. MacLeod had previously admitted to a problem with alcohol and had, in September of 1992, signed a commitment to remain abstinent pursuant to the terms of the Company's Alcohol and Drug Abuse Program.

The record discloses a substantial history of alcohol and drug abuse problems experience by Mr. MacLeod. An addiction to medication prescribed for an anxiety personality disorder led to his participation in an in-patient program at the St. Thomas Psychiatric Hospital in August of 1991. In August of 1992 he was admitted to the Lakehead Psychiatric Hospital. The diagnosis recorded by Dr. R.R. Kletke confirms that the grievor "... has a very long history of alcohol abuse, prescription drug abuse and depression, lasting at least for the last twenty-one years." The doctor also notes that the grievor conceded that he had "... never really given Alcoholics Anonymous a chance."

It appears that following his discharge Mr. MacLeod took a different tack. The record discloses that for a substantial time he attended Alcoholics Anonymous meetings regularly. His own evidence is that he has been alcohol free since February 4, 1993. He relates, however, that by reason of having found work as a taxi driver, working twelve to fourteen hour shifts starting at 6:00 p.m., he has not had any recent involvement in Alcoholics Anonymous. In the result, unfortunately, the evidence of his recent and current sobriety is uncorroborated.

The Company relies on a number of prior reported arbitration awards in which persons responsible for driving trucks were discharged for being impaired during the course of their employment, where the discharges were sustained by boards of arbitration: **Re Consolidated Truck Lines Ltd.** (1951), 3 L.A.C. 964 (Hanrahan); **Re Inter-City Truck Lines Canada Inc.** (1988) 32 L.A.C. (3d) 370 (MacDowell); **Re Corporation of Borough of East York** (1990) 11 L.A.C. (4d) 133 (Knopf) as well as **CROA 246** and **CROA 1028**.

The foregoing jurisprudence does confirm the severity with which arbitrators view the discipline to be assessed in respect of an employee who is impaired while entrusted with the care and control of a vehicle. The grievor's circumstances, involving the transportation of employees on private and public roadways, plainly falls within the scope of those cases, which hold that discharge is the presumptive disciplinary response, in light of the safety sensitive aspects of the employment in question. The case at hand is, in some respects, similar to **CROA 1028** where the discharge of a forklift driver was sustained. In that case the employee was found intoxicated during the course of his employment. Like the grievor in the case at hand, the employee had participated for some time in the Company's alcoholism program.

The case at hand is particularly difficult, in light of the length of Mr. MacLeod's prior service. However, the record also discloses that he has been given extensive consideration by the Company, including lengthy leaves of absence, in an effort to assist him to deal with his alcohol and drug abuse problems. Unfortunately, as evidenced by the events of February 5, 1993, the accommodations extended to him did not produce the hoped for result. Further, the Arbitrator must express a degree of reservation in light of the grievor's own admission that, at present, he is no longer involved in any follow-up or support programs of Alcoholics Anonymous. While it is plainly to be hoped that he can maintain control of his condition, as he says he has, the objective evidence adduced before me in support of a request for reinstatement lacks the necessary corroboration. On the whole of the evidence I am compelled to the conclusion that this is not an appropriate case for a substitution of penalty.

For the foregoing reasons the grievance must be dismissed.

14 October 1994

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