

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2648

Heard in Montreal, Tuesday, 11 July 1995

concerning

CANADIAN PACIFIC RAILWAY LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Dismissal of Mr. R. Doucet.

BROTHERHOOD'S STATEMENT OF ISSUE:

On August 17, 1994, the grievor was dismissed from Company service for conduct unbecoming as a result of allegedly possessing a prohibited narcotic, allegedly being intoxicated in a public place and, subsequently, allegedly testing positive for a prohibited substance.

FOR THE BROTHERHOOD:

(SGD.) J. J. KRUK
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. M. Andrews – Labour Relations Officer, Vancouver
D. T. Cooke – Manager, Labour Relations, Montreal

And on behalf of the Brotherhood:

P. Davidson – Counsel, Ottawa
D. W. Brown – Senior Counsel, Ottawa
J. J. Kruk – System Federation General Chairman, Ottawa
D. McCracken – Federation General Chairman, Ottawa
G. Beauregard – General Chairman, Montreal

AWARD OF THE ARBITRATOR

The record discloses that the grievor, Mr. R. Doucet, has a history of work related problems prompted by his condition as an alcoholic. The instant grievance arises as a result of his discharge after he was incarcerated on May 28, 1994 for being drunk in a public place, a charge which led to his conviction. It further appears that when apprehended the grievor was in possession of a small amount of marijuana, in respect of which he was also convicted for possession.

Mr. Doucet has been employed by the Company for some eleven years. While his record was clear at the time of his discharge following the events of May, 1994, it does not appear disputed that he did incur some thirty-five demerits over the period of his employment. Most significantly, however, for the purposes of this grievance, Mr. Doucet was, on two prior occasions, allowed to participate in the Company's Employee and Family Assistance Program, by reason of his condition as an alcoholic. He initially signed a commitment to abstinence from alcohol as a condition of his employment on September 19, 1989. He then attended a rehabilitation program as part of the Company's efforts at assisting him to deal with his problem. Mr. Doucet had a relapse in 1992 and again the Company gave him the opportunity to avail himself of counselling and support group assistance. On November 19, 1992 he once more signed a further written commitment to abstain from alcohol as a condition of his continued employment with the Company.

Unfortunately, as the events of May, 1994 disclose, Mr. Doucet was apparently unable to honour his undertaking. The thrust of the Brotherhood's position before the Arbitrator is that Mr. Doucet has now made strides to correct his problem, and should be given another chance to prove himself.

Regrettably, the Arbitrator cannot agree. I am compelled to agree with the Company that the facts of the instant case fall within the principles canvassed in **SHP Case No. 272**, between the Canadian National Railway Company and the then Canadian Brotherhood of Railway Carmen of the United States and Canada (grievance re Carman R.A. Round), where the following comments appear:

Consideration must also be given to the grievor's condition as a drug addict which, like alcoholism, is tantamount to an illness. Even accepting those factors, however, the Arbitrator has difficulty seeing how the balance can be tipped in favour of Mr. Round in the instant case. The material establishes beyond dispute that for a substantial period of time the Company was aware of the grievor's difficulties with drug addiction. In respect of that tragic problem it provided to him the counselling facilities of its Employee Assistance Program as well as an extended leave, including sick leave and vacation, for a period of close to six months, to help him on the road to rehabilitation. The record in this case does not disclose the response of an indifferent or uncaring employer. On the contrary, it is plain that the Company made every effort to give the grievor a second chance and to assist him towards rehabilitation. Its obligations in that regard, however, cannot be viewed as indefinite.

On a review of the record, I am compelled to conclude that the Company has been extremely fair and patient in its dealing with the grievor and his medical problem. It has, in my view, made every effort to reasonably accommodate the grievor's condition, and has tried in good faith, on more than one occasion, to assist him to gain control of his alcoholism so as to keep his employment in a safety sensitive position. In light of the events of May of 1994, however, the Arbitrator cannot find any basis upon which to conclude that the Company should be held to an obligation beyond that which it has already fulfilled. It would, in my view, be undue hardship to require the Company to give to Mr. Doucet yet another "second chance".

For the foregoing reasons the grievance must be dismissed.

July 14, 1995

(signed) MICHEL G. PICHER
ARBITRATOR