

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2743

Heard in Calgary, Thursday, 16 May 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

Appeal the Company's decision to terminate the services of P.V. O'Connell of Rainy River, Ontario effective September 6, 1994, for conduct incompatible with occupying a safety sensitive position and violation of personal contract dated November 12, 1993.

JOINT STATEMENT OF ISSUE:

On August 22, 1994, Mr. O'Connell attended a medical assessment and drug test as condition of his personal reinstatement contract dated November 12, 1993. The results of his drug test revealed the presence of an illicit drug, which violated the terms and conditions of his reinstatement contract.

The Union's position is that the grievor followed the conditions set out in his reinstatement contract, and denies having used an illicit drug.

The Union requests that the grievor be reinstated to his former position, with full compensation and without loss of seniority or benefits.

The Company maintains that the grievor was justly discharged and has declined the Union's request.

FOR THE COUNCIL:

(SGD.) J. W. ARMSTRONG
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. TORCHIA
FOR: SENIOR VICE-PRESIDENT, CN WEST

There appeared on behalf of the Company:

| | |
|--------------|----------------------------------------|
| R. Reny | - Labour Relations Officer, Edmonton |
| S. Blackmore | - Labour Relations Assistant, Edmonton |
| J. Torchia | - Manager, Labour Relations, Edmonton |
| J. Dixon | - Labour Relations Officer, Edmonton |
| W. Barber | - Labour Relations Officer, Edmonton |
| J. Raynard | - Superintendent, Transportation |

And on behalf of the Council:

| | |
|-----------------|-----------------------------------|
| M. G. Eldridge | - Vice-General Chairman, Edmonton |
| J. W. Armstrong | - General Chairman, Edmonton |
| H. Richardson | - Local Chairperson, Calgary |
| B. Mitchel | - Local Chairperson, Edmonton |
| P. V. O'Connell | - Grievor |

AWARD OF THE ARBITRATOR

In November of 1993 the grievor, Mr. P.V. O'Connell found himself in peril of discharge. He then signed a contract as a condition of his reinstatement to work, in the form of a letter dated November 12, 1993, which contains a number of conditions precedent to his continued employment. Those conditions include the following:

3. You must agree to be medically examined including drug/alcohol testing prior to reinstatement. You must agree to be medically examined including tests for drug/alcohol abuse every three months for the first two years from the date of your return to service, or as recommended by the Company physician.
4. You must agree to post-treatment monitoring as prescribed by the Employee Assistance Program.
5. While employed by CN Rail, should you fail to abstain from drugs or alcohol and/or fail to comply with the Employee Assistance Program, you will be discharged from the Company and will not be considered for reinstatement under this policy.

The record before me establishes, beyond any substantial controversy, that during the course of a periodic medical examination, which included a drug and alcohol test, Mr. O'Connell proved positive for cannabinoids, or marijuana. Following a disciplinary investigation, at which a copy of the drug test report in the possession of the Company was provided to the grievor, he was terminated for violation of the terms of his personal contract.

This Office can see no responsible basis upon which to reverse that decision. The ability of employers and unions to make individual employees, whatever their personal problems, subject to strict conditions as a requirement of their continued employment is an instrument of great importance whose credibility should be sustained by employers, unions and arbitrators alike. In **CROA 2632** the rationale for the reluctance of arbitrators to interfere with the consequences of the violation of such conditions was expressed in the following terms:

... To [interfere] would be tantamount to disregarding or amending the conditions agreed to between the parties, ... As a matter of general policy, such settlements should be encouraged. As reflected in Canadian arbitral jurisprudence, arbitrators do not interfere with the terms of such settlements, as to do so would tend to discourage parties from resorting to them and, ultimately, undermine their utility as an important instrument for resolving disputes. ...

See also **CROA 2595** and **2704**.

On the evidence, the Arbitrator is satisfied, on the balance of probabilities, that Mr. O'Connell did consume a prohibited drug, contrary to the terms of his agreement. The pre-agreed consequence for that infraction is discharge.

The grievance must therefore be dismissed.

May 17, 1996

(signed) MICHEL G. PICHER
ARBITRATOR