

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2753

Heard in Montreal, Thursday, 13 June 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)**

EX PARTE

DISPUTE:

Appeal the discharge of locomotive engineer R.G. Taylor, on 26 May 1994, for violating the terms and conditions of his reinstatement contract dated 12 October 1990, as a result of his failure to remain fully abstinent from alcohol and for submission of fraudulent documents attesting to ongoing involvement in Alcoholics Anonymous.

COMPANY'S STATEMENT OF ISSUE:

On 15 July 1993, the Company's CN Police Department was contacted by three associates of R. Taylor's, alleging, among other things, that R. Taylor was not complying with his reinstatement conditions to remain fully abstinent from alcohol and drugs, and that the grievor had additionally supplied the Company with fraudulent documents with respect to his participation with Alcoholics Anonymous and had contracted with one of the associates to provide him with urine samples to be used during his quarterly drug/alcohol screens.

The Company's investigation of the matter determined that the grievor was not adhering to the terms and conditions of his reinstatement contract of 12 October 1990. In this regard, the Company's investigation concluded that the grievor has not remained fully abstinent from alcohol, and that the grievor supplied the Company with fraudulent documents attesting to his continued participation with Alcoholics Anonymous. Moreover, the Company's investigation revealed that the grievor was in violation of the terms and conditions of employment for a protracted period of time.

As a result of the above noted violations, the Company discharged the grievor effective 26 May 1994, for violation of his reinstatement contract of 12 October 1990.

The Union contends that the grievor's rehabilitative efforts following his discharge should be taken into consideration to mitigate the penalty of discharge.

The Company disagrees with the Union's contention and has declined the Union's request.

FOR THE COMPANY:

(SGD.) R. BATEMAN

FOR: SENIOR VICE-PRESIDENT, CN EAST

There appeared on behalf of the Company:

K. R. Peel	– General Counsel - Ontario, Toronto
R. Bateman	– Assistant Manager, Labour Relations, Toronto
T. Storey	– Special Agent, CN Police, Toronto

C. Morgan – Labour Relations Officer, Toronto

And on behalf of the Council:

H. F. Caley – Counsel, Toronto
C. Hamilton – General Chairman, Toronto
D. Corfield – Local Chairman, Division 70
M. Gregotski – General Chairman, UTU, Fort Erie
R. G. Taylor – Grievor

AWARD OF THE ARBITRATOR

The record discloses that on October 12, 1990 the grievor, whose services had previously been terminated for a violation of UCOR Rule G, signed a contract of reinstatement with the Company, on the strength of the Brotherhood's submission that he was rehabilitated and recovered from his condition as an alcoholic. I am satisfied that the terms of the reinstatement, which the grievor understood or reasonably should have understood, included an unconditional requirement that he must remain fully abstinent from alcohol and drugs. It also involved conditions with respect to alcohol and drug testing and attendance at meetings of Alcoholics Anonymous, for a period of not less than three years.

Although considerable evidence was adduced as to the method by which information respecting the grievor's subsequent conduct was obtained by the Company, in part from his estranged common law spouse, it is unnecessary to deal at length with that evidence. The uncontested fact is that Mr. Taylor did consume alcohol, on more than one occasion, during the course of his reinstatement, contrary to the conditions which he undertook. By his own admission, recovery from his alcoholism eluded him as recently as March of 1995, when he found it necessary to re-enter in-patient treatment at the Renascent Centre in Toronto. Documentary evidence confirming his completion of that treatment was adduced in evidence. There is, however, no documentary evidence to confirm the grievor's assertion that he has since that time been involved in the activities of Alcoholics Anonymous.

Counsel for the Brotherhood stresses that the terms of the contract of reinstatement made in October of 1990 state that failure to pass an alcohol or drug test, or to attend such a test, "will result in grounds for dismissal." On that basis he suggests that a violation of other terms of the agreement do not necessarily result in the grievor's termination. The Arbitrator has some difficulty with that submission. Plainly, the contract was made by both parties in the spirit of progressive discipline, as a means of assisting the grievor, following his earlier discharge, to return to work on conditions that would involve his abstinence from alcohol. I cannot, on the face of the document, conclude that the failure to respect that most fundamental condition of the contract was not understood by all concerned to amount to grounds for termination of the reinstatement and of his employment.

In a recent award, **CROA 2743**, this Office had occasion to consider the consequences to an employee who entered into a similar personal contract with respect to not using marijuana. When he was discharged following a drug test which proved positive, the employee's grievance was dismissed with the Arbitrator commenting, in part, as follows:

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**.

This case is extremely unfortunate, given the length of the grievor's service, the fact that he has struggled with his condition as an alcoholic, and that he is still in a delicate stage of recovery, the documentation of which is less than complete. He has, however, had the benefit of an enlightened approach by the Employer, including progressive discipline and a reinstatement agreement specifically fashioned to accommodate his condition. Sadly, that has not succeeded. On the material before me I can see no basis to conclude that still further accommodation should be required of the Company, or that its decision should be reversed or reduced in the alternative terms suggested in the thorough and resourceful argument made by Counsel on behalf of the Brotherhood.

For the foregoing reasons the grievance must be dismissed.

June 14, 1996

(signed) MICHEL G. PICHER
ARBITRATOR