

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3026

Heard in Montreal, Thursday, 14 January 1999

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Dismissal of Mr. A. Dmyterko.

EX PARTE STATEMENT OF ISSUE:

By way of Form 104 dated July 24, 1998, the grievor was dismissed from company service for, allegedly, "reporting for duty under the influence of alcohol, a violation of CROR Rule G" on June 17, 1998. The Brotherhood grieved.

The Union contends that: 1.) The grievor was not in violation of CROR Rule G on the date in question; 2.) The discipline assessed was excessive and unwarranted in the circumstances.

The Union requests that the grievor be reinstated forthwith without loss of seniority and with full compensation for all financial losses incurred as a result of this matter.

The Company denies the Union's contentions and declines the Union's request.

FOR THE BROTHERHOOD:

(SGD.) J. J. KRUK

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. M. Andrews – Manager, Labour Relations, Calgary
E. J. MacIsaac – Labour Relations Officer, Calgary

And on behalf of the Brotherhood:

P. Davidson – Counsel, Ottawa
J. J. Kruk – System Federation General Chairman, Ottawa
D. W. Brown – Sr. Counsel, Ottawa

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond the balance of probabilities, that the grievor was in fact in violation of rule G on the morning of June 17, 1998, when he reported for duty. I am satisfied that Mr. Dmyterko was under the influence of alcohol and unfit for duty by reason of his consumption of beer over a substantial period of the prior evening and early morning. In the result the Company had just cause to assess discipline for a violation of rule G in that Mr. Dmyterko consumed alcohol while subject to duty and appeared for duty under its influence.

Part of the contention of the Brotherhood before the Arbitrator is that in fact Mr. Dmyterko should have been afforded the procedures and protections of a formal referral to the EFAP program, a consequence of which he should not have been disciplined. It is not disputed that the grievor's supervisor did tell him that he was subject to a mandatory EFAP referral while dealing with him during the course of June 17, 1998. He then gave him the name and telephone number of an EFAP officer to contact. There appears to be some dispute between the parties as to the scope and intention of the mandatory referral aspects of the EFAP program. The Brotherhood submits that an employee so referred is not to be discharged, but rather is to be eventually returned to work, subject to compliance with the procedures of the EFAP and the approval of the Company's Chief Medical Officer. The Company takes issue with the Brotherhood's interpretation and submits, in any event, that in the case at hand the grievor's supervisor simply proceeded in error, and intended only to advise him informally of the services of the EFAP at the time in question.

The issue of mandatory referral to the EFAP, and the status of the EFAP program as a joint Company/Union understanding is one of some legal technicality not fully argued in the case before me. That is understandable, as the issue of formal referral to the EFAP is not one which is raised in the Brotherhood's statement of issue. In the circumstances I am of the view that it is not one which is properly before me from a jurisdictional standpoint. I therefore make no determination as to that issue for the purposes of the instant grievance.

The substance of the dispute concerns the appropriate measure of discipline to be assessed against Mr. Dmyterko. The record discloses that he has some ten years' service with the Company. During that time he was disciplined only once, recording a five demerit assessment for an unsafe work practice. Most significantly, the record before the Arbitrator indicates that following his discharge by the Company the grievor was diagnosed as an alcoholic and successfully pursued a rehabilitation program of The Addictions Foundation of Manitoba in August of 1998. Since that time he has completed an aftercare program and has been a regular participant in the meetings of Alcoholics Anonymous, as confirmed in a letter from his sponsor, filed in evidence, dated January 5, 1999. Bearing in mind that alcoholism is an illness which, like other disabilities, is to be treated consistent with general duties of accommodation, I am satisfied that, in light of the documentation filed, this is a case for a substitution of penalty on terms fashioned to protect the Company's legitimate interests.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for wages and benefits lost, and without loss of seniority. Mr. Dmyterko's reinstatement shall be conditional upon his agreeing to be subject to random drug and alcohol testing, to be administered in a non-abusive fashion, for a period of not less than two years from the date of his reinstatement, and to fully abstain from alcohol and drugs during the same period of time. His reinstatement shall also be conditional upon continuing to participate in the meetings of Alcoholics Anonymous, or such other similar organization as may be agreed, with quarterly reports to be provided from a representative of that organization to the Company, in writing, for the period of two years.

January 18, 1999

(signed) MICHEL G. PICHER
ARBITRATOR