

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3126

Heard in Montreal, Wednesday, 12 July 2000

concerning

### ONTARIO NORTHLAND TRANSPORTATION COMMISSION

and

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Reinstatement of Motor Coach Operator, Len Loughran.

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

An investigation was held with Motor Coach Operator Len Loughran on September 13, 1999 to determine his responsibility in connection with his testing positive on a drug test on August 26, 1999. On September 23, 1999 Mr. Loughran was advised that he was dismissed from the service effective September 7, 1999.

The Union appealed the dismissal contending that the Company denied Mr. Loughran a fair chance to rehabilitate himself through the benefits of the Employee and Family Assistance Program. The Union requested that he be reinstated and placed on weekly indemnity until such time that he can satisfy Ministry of Transportation regulations to drive a motor coach.

The Company refused to reinstate Mr. Loughran and denied the appeal.

The Union believes that the dismissal is too harsh in the circumstances and that the penalty ought to be mitigated in favour of Mr. Loughran. The Union requests that Mr. Loughran be reinstated with seniority upon such terms that the arbitrator deems equitable and just in this case.

#### **FOR THE UNION:**

**(SGD.) P. G. KONING**  
GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) L. K. MARCELLA**  
DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

M. J. Restoule	– Manager, Labour Relations, North Bay
K. Duquette	– Labour Relations Officer, North Bay
D. Rochon	– Assistant Operations Manager, North Bay

And on behalf of the Union:

D. F. Wray	– Counsel, Toronto
P. G. Koning	– General Chairman, North Bay
Wm. Ross	– Local Chairperson, Local 1161
L. Loughran	– Grievor

## **AWARD OF THE ARBITRATOR**

It is common ground that the grievor tested positive for cannabis on August 26, 1999. That is the second occasion upon which he was found to have used marijuana. The record reveals that previously Mr. Loughran had voluntarily participated in a random drug testing program, a program which by the agreement of the Union is apparently mandatory for employees responsible for driving charter buses into the United States. Under that program Mr. Loughran tested positive for cannabis in November of 1998. Under the Company's policy he was then compelled to follow a treatment program, which he did, and to be subject to more frequent random monthly drug tests for a period of six months. He successfully cleared the six month period, however a further random drug test in August of 1999 revealed yet another positive result. Based on that he was discharged from his employment.

It is important to stress that for the purposes of their collective agreement the parties appear to have agreed that a positive drug test is, of itself, a violation of the Company's policy and cause for discipline. In any event it does not appear disputed, given the grievor's own admission as to the daily consumption of substantial amounts of marijuana, that in all probability he did work while impaired, a circumstance of obvious concern to the Company which operates a safety sensitive bus passenger service.

The real issue in the case at hand is whether there are grounds to reduce the penalty of discharge. I am satisfied that there are. The material before me confirms that Mr. Loughran suffered a condition of drug dependency. By his own account he entered the random drug testing program in hopes that it would impose a discipline upon him that would bring his drug habit to an end. Unfortunately, notwithstanding his success in the initial twenty-eight day outpatient treatment program following his first positive drug test, he "fell off the wagon" and resumed marijuana use, resulting in the second positive drug test which led to his dismissal.

Following his dismissal Mr. Loughran sought the assistance of the Eclipse Counselling and Education Services and was referred for treatment to the St. Joseph Treatment Centre of North Bay. After completing the program at the St. Joseph Treatment Centre he enrolled with Addiction Outreach Muskoka Parry Sound for after-care counselling on December 16, 1999 and has, since that time, actively participated twice weekly in the activities of Alcoholics Anonymous. Material in the file confirms that the grievor successfully followed the after-care program in Parry Sound through April 25, 2000, and that he has continued to this date to attend meetings of Alcoholics Anonymous twice a week. There is, therefore, ample documentation before the Arbitrator to confirm that the grievor suffered from a drug dependency problem, that he has taken substantial steps to bring that problem under control and has succeeded in those efforts. Bearing in mind that drug dependency is a form of disability in respect of which both the employer and union bear an obligation of reasonable accommodation under the **Canadian Human Rights Act**, I am satisfied that it is appropriate in the circumstances to substitute a penalty less drastic than discharge, but framed in terms to protect the employer's legitimate interests.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without compensation for wages and benefits lost. His reinstatement shall, however, be conditional upon his accepting to be subject to random drug and alcohol testing, to be administered in a non-abusive fashion, and to remain abstinent from the consumption of illegal drugs or alcohol for a period of not less than two years following the date of his reinstatement. As a further condition of reinstatement the grievor shall participate in the activities of Alcoholics Anonymous, or any similar organization agreed to between the parties, also for a period of not less than two years, with his participation being certified to the employer on a quarterly basis by a duly authorized representative of Alcoholics Anonymous or such other organization. Failure to observe the conditions so accepted, or a positive test result, shall be grounds for the grievor's termination, with access to arbitration only on the issue of whether he did in fact fail to meet the conditions herein.

July 14, 2000

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