

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3223

Heard in Calgary, Thursday, 15 November 2001

concerning

CANADIAN PACIFIC RAILWAY

and

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

EX PARTE

DISPUTE:

The assessment of 40 demerit marks to Lethbridge conductor K.J. Alexander and his subsequent dismissal account an accumulation of demerit marks.

COUNCIL'S STATEMENT OF ISSUE:

On June 23, 2000, Conductor K.J. Alexander's discipline record was debited with forty (40) demerit marks for his continued failure to meet his employment obligations and for his unacceptable level of absenteeism during the period January to June 5, 2000, at Lethbridge, Alberta.

Conductor Alexander was subsequently dismissed on account of an accumulation of demerit marks.

The Council advanced a grievance contending that there was no just cause for the imposition of the 40 demerit marks and requested that they be removed from Conductor Alexander's record. In any event, the Council contends that the penalty of discharge is too severe in all of the circumstances and requested that Conductor Alexander be reinstated into Company serviced with no loss of seniority or benefits and with full compensation for all wages lost. Alternatively, the Council has requested that Conductor Alexander be reinstated into Company service on such terms as may be considered appropriate.

The Company has declined the Council's grievance.

FOR THE COUNCIL:

(SGD.) D. H. FINNISON

FOR: GENERAL CHAIRPERSON

There appeared on behalf of the Company:

C. M. Graham	– Labour Relations Officer, Calgary
J. C. Copping	– Manager, Labour Relations, Calgary
G. S. Seeney	– Manager, Labour Relations, Calgary
D. E. Guerin	– Labour Relations Officer, Calgary
K. Bishop	– Road Manager, Lethbridge
C. D. Carroll	– Director, Labour Relations, Calgary

And on behalf of the Council:

- | | |
|------------------|-------------------------------------|
| D. Ellickson | – Counsel, Toronto |
| L. O. Schillacci | – General Chairperson, Calgary |
| D. Finnon | – Vice-General Chairperson, Calgary |
| K. J. Alexander | – Grievor |

AWARD OF THE ARBITRATOR

The grievor is a long term employee, having entered the service of the Company in August of 1978. The record discloses that he has a long history of alcoholism and drug dependence. These difficulties apparently became known to the Company in or about 1999. Mr. Alexander was dismissed after the assessment of forty demerits for his absenteeism between January and June of 2000. The Council does not dispute that he had a high rate of absenteeism. In its submission, however, the penalty assessed against him is unduly harsh, regard being had to his personal circumstances and the illness, in the form of alcoholism and drug dependence, which was at the root of his failure to be assiduous in his attendance at work.

It does not appear disputed that for the purposes of the case before me the grievor's record should be taken as at forty-five demerits at the time of the discipline resulting in his termination. In the Arbitrator's view a significant mitigating factor to be considered in the case at hand is the comprehensive psychological assessment and progress report prepared by the grievor's psychologist, W. Peter Palmer. That report reviews Mr. Alexander's long-standing difficulties with alcoholism and drug dependency, and the efforts which he has made to overcome them. Additionally, by the grievor's own account, he has been free of alcohol consumption for a number of months. In this circumstance I am satisfied that an appropriate order for reinstatement can be made, subject to conditions fashioned to protect the Company's legitimate interests, while according a degree of accommodation to the grievor in recognition of his documented disability.

The Arbitrator therefore directs that the grievor be reinstated into his employment forthwith, without compensation for wages and benefits lost, and without loss of seniority. The grievor's reinstatement shall be conditional upon his accepting to be subject, for the period of two years following his reinstatement, to abstain from alcohol and drug consumption and to be subject to random alcohol and drug testing, to be administered in a non-abusive manner. Additionally, should the grievor fail to record a level of attendance equal to or better than the average of the employees in his classification at his terminal, as calculated over any four month period, he shall be subject to immediate discharge, without recourse to arbitration save in respect of the calculation of the rates of absenteeism to be applied. The Arbitrator further directs that as a condition of reinstatement the grievor remain under the continuing care of Mr. Palmer, or another counsellor to be mutually selected by the parties, for a period of not less than two years following his reinstatement, with his participation in that ongoing counselling to be confirmed in writing by the counsellor to the Company on a quarterly basis.

November 16, 2001

(signed) MICHEL G. PICHER
ARBITRATOR