

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3355

Heard in Edmonton, Wednesday, July 9, 2003

concerning

CANADIAN PACIFIC RAILWAY

and

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

DISPUTE:

The dismissal of Yardmaster Mr. Wayne Martin of Coquitlam, B.C.

JOINT STATEMENT OF ISSUE:

On December 10, 2001, W. Martin was dismissed from Company service for conduct unbecoming an employee of CPR, as evidenced by "your reporting for duty on the RSI assignment November 8, 2001, under the influence of alcohol and for your failing to adhere with Supervisor's instructions, a violation of CROR rule "G" and the terms and conditions of your arbitrated return to work as outlined in CROA 2716."

The Council appealed the discipline on the grounds, *inter alia*, that the investigation process was flawed, in violation of article 70, and that this employee did not receive a fair and impartial investigation. The council also alleged that just cause for dismissal did not exist, the discipline was excessive and that the grievor's disability was not accommodated. The Council also submits that it would not have been unreasonable for the Company to accommodate the brief relapse of the grievor nor would such constitute undue hardship upon the Company.

In the alternative and without prejudice or precedent, the Council also submits that the ultimate result (discharge) out to be interfered with by the Arbitrator on the basis of mitigating factors including the grievor's disability and the Company's obligation to accommodate such. The Council submits that there is sufficient evidence of mitigation in favour of the grievor (both general and specific) and that the Company is obliged to accommodate the grievor failing which the Council seeks such an order from the Arbitrator.

The Council seeks the reinstatement of the grievor without loss of seniority, benefits or wages. In the alternative, the Council seeks the reinstatement of the grievor on such terms that the Arbitrator considers appropriate.

The Company disagreed with each of the allegations and arguments of the Council as set out above and declined the grievance.

FOR THE COUNCIL:

(SGD.) D. H. FINNISON
FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. COPPING
FOR: GENERAL MANAGER, OPERATIONS

There appeared on behalf of the Company:

C. Ayton	– Labour Relations Officer, Calgary
J. Copping	– Director, Labour Relations, Calgary
R. Hempel	– Manager, Labour Relations, Calgary
E. Tomlenovich	– Road Manager, Coquitlam

And on behalf of the Council:

D. Ellickson	– Counsel, Toronto
D. H. Finnson	– Vice-General Chairperson, Calgary
W. Martin	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor, who is an alcoholic, attended on the Company's property on November 8, 2001 clearly under the influence of alcohol. While there is some dispute between the parties as to whether he then attended for the purpose of riding a road switcher for familiarization, I consider that aspect of the facts to be relatively immaterial to the true issue at hand.

The grievor, an employee of some twenty-three years' service, is an alcoholic. In February of 1995 that condition resulted in his committing a driving infraction while on duty, resulting in his discharge. He was then reinstated by the order of this Office, subject to conditions, including that he abstain from the consumption of alcohol and non-prescription drugs. He was further made subject to conditions concerning participation in meetings of Alcoholics Anonymous, and the possibility of random of alcohol and/or drug tests for a period of two years (CROA 2716).

The material before the Arbitrator confirms that Mr. Martin appears to have remained in control of his condition as an alcoholic from the time of his reinstatement in 1996 to the time of the unfortunate events leading to his second discharge on December 10, 2001. Having carefully reviewed the file, and bearing in mind the obligation of accommodation that is owed to a person suffering from the medical disability of alcoholism, a condition which can involve a relapse, I am satisfied that this is an appropriate case for fashioning a remedy that will give the grievor a last chance, in terms which will also protect the Company's interests.

The Arbitrator therefore directs that the grievor be reinstated into employment with the Company, in a clerical position, and not in a safety-sensitive position, in accordance with such work as he may hold by reason of his seniority, and that thereafter he be permanently precluded for holding safety sensitive work, absent any agreement to the contrary by the Company. In that regard it should be noted that the grievor did hold a position as a clerk in another bargaining unit, albeit he worked as a yardmaster on weekends. The grievor's reinstatement shall further be conditioned on his remaining abstinent from alcohol and non-prescription drugs, his regular attendance at meetings of Alcoholics Anonymous, to be confirmed in writing to the Company by an appropriate officer of that organization on a quarterly basis, and his being subject to random alcohol or drug testing, to be administered in a non-abusive fashion. The foregoing conditions shall apply for the duration of the grievor's employment with the Company. Failure to abide by any of the foregoing conditions shall render the grievor liable to discharge, with access to arbitration only in respect of the issue of whether he did violate any such condition or conditions. The grievor's reinstatement shall be without loss of seniority, and without compensation for wages and benefits lost.

July 14, 2003

(signed) MICHEL G. PICHER
ARBITRATOR