

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3369

Heard in Montreal, Thursday, 11 September 2003

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Dismissal of Mr. R. Bissaillon.

BROTHERHOOD'S STATEMENT OF ISSUE:

By way of form 104 dated July 22, 2002, the grievor was dismissed from Company service for his alleged "conduct unbecoming an employee as evidenced by your possession of illegal drugs for the purposes of trafficking and your admitted use of illegal drugs while working as a machine operator on Company property, a violation of Rule 1.8 of the Algoma Track program Hotel and Camp Rules at Jackfish, Ontario, May 16, 2002." In response a grievance was filed.

The Union contends that: **(1.)** The grievor is an employee with an otherwise stellar discipline record; **(2.)** The grievor should properly have been extended deferred discipline; **(3.)** The discipline assessed was excessive and unwarranted in the circumstances.

The Union requests that the grievor be reinstated into Company service forthwith without loss of seniority and with full compensation for all wages and benefits lost 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:

D. E. Guérin	– Labour Relations Officer, Calgary
E. J. MacIsaac	– Manager, Labour Relations, Calgary
M. Moran	– Labour Relations Officer, Calgary
C. Goheen	– Track Field Coordinator

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

The evidence before the Arbitrator establishes that the grievor proceeded to a remote work site on April 15, 2002 in possession of 112 grams of marijuana, as well as a scale and rolling papers. I am satisfied that in those circumstances the grievor's intention was to traffic in the marijuana which he was then carrying. That trafficking would, in all likelihood, have involved selling the prohibited substance to employees in the remote workplace where he was assigned. I do not accept the grievor's explanation, given during the course of his disciplinary investigation, to the effect that the marijuana was intended for his own use as a pain reliever, and that he consumed up to 20 marijuana joints a day to obtain pain relief from injuries to his back and foot.

While there is material before me to indicate that Mr. Bissaillon did suffer from a dependence on marijuana, and has since undergone successful rehabilitation, it remains that he knowingly and deliberately engaged in a course of conduct grossly incompatible with the safety sensitive operations of a railway. Boards of arbitration, like the courts charged with the administration of the criminal law, have recognized the difference in the degree of seriousness that may attach to trafficking in prohibited drugs, as opposed to mere possession. As was stated in **SHP 370**, between CPR and CAW:

Trafficking in narcotics is justly seen as a serious threat to social and legal order. As a common carrier with a high public profile, the Company is entitled to take such reasonable steps and precautions as are necessary to ensure its safe operations. This, in the Arbitrator's view, would extend to excluding from the workplace persons charged with or known to be involved in the trafficking of narcotics. As was noted in **CROA 1703**, in a safety sensitive industry in the field of transportation, an employer may have a legitimate concern as to whether persons involved in the trafficking of narcotics will be prompted by the profit motive to pursue their illegal activities in the workplace.

The grievor in the case at hand is not a long service employee. He was, moreover, less than consistent and forthcoming, and in my view less than honest, in his explanation respecting the purpose or intended use of the drugs in his possession. On the whole, I am satisfied that the Company was justified in terminating the services of Mr. Bissaillon, and that this is not an appropriate case for a substitution of penalty. The grievance is therefore dismissed

September 19, 2003

(signed) MICHEL G. PICHER
ARBITRATOR