

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3417

Heard in Montreal, Thursday, 15 April 2004

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Dismissal of Mr. R. Veerasammy.

JOINT STATEMENT OF ISSUE:

On December 8, 2003, the grievor was dismissed for "conduct unbecoming as evidenced by your use of marijuana while on duty; a violation of Items 2.1.2.1, 2.1.2.2, 2.1.2.3. of Form 300-4 while working as a Machine Operator on the Manitoba Steel #2 Crew, September 2003". In response, a grievance a grievance was filed.

The Union contends that: **1.)** The grievor did not consume marijuana while at work; **2.)** A positive drug test is not evidence of impairment while at work; **3.)** The grievor is a long service employee who has never received discipline for any drug or alcohol related incident; **4.)** The grievor has taken steps to deal with his dependency problem.

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

FOR THE BROTHERHOOD:

(SGD.) J. J. KRUK

SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) GUÉRIN

FOR: GENERAL MANAGER, ENGINEERING SERVICES

There appeared on behalf of the Company:

D. E. Guérin	– Labour Relations Officer, Calgary
Karen Fleming	– Counsel, Calgary
E. MacIsaac	– Manager, Labour Relations, Calgary
C. Beaudry	– Constable, CPR Police Service
A. M. Paton	– Assistant Track Program Supervisor

And on behalf of the Brotherhood:

P. Davidson	– Counsel, Ottawa
D. W. Brown	– Senior Counsel, Ottawa
J. J. Kruk	– System Federation General Chairman, Ottawa
D. McCracken	– Federation General Chairman, Ottawa
R. Veerasammy	– Grievor

AWARD OF THE ARBITRATOR

Upon a careful review of the evidence the Arbitrator is satisfied that the Company has established, on the balance of probabilities, that the grievor, Machine Operator R. Veerasammy, did smoke a marijuana joint while on duty on September 4, 2003.

The evidence of Assistant Track Program Supervisor A.M. Paton establishes that on the day in question, towards the end of the working day, he found himself walking past the grievor's machine, approaching it from behind. He states that he smelled the distinct odour of marijuana and looked around to see where it was coming from. The evidence of Mr. Paton, which the Arbitrator accepts as honest and accurate, is that as he walked past Mr. Veerasammy, at a distance of some fifteen to twenty feet, he looked over and saw him puffing a marijuana joint. He confirms that he saw smoke in the air, saw the "joint" being smoked by the grievor and that upon seeing him Mr. Veerasammy left the place where he was seated on his machine and went around to the other side, out of Mr. Paton's sight.

Although the Company tendered additional evidence, including the fact that Mr. Veerasammy declined to have his personal effects searched when Mr. Paton returned to the machine accompanied by another supervisor and police officers, as well as the fact that he tested positive on a subsequent drug test, in the Arbitrator's view the case stands convincingly on the evidence of Mr. Paton, and need not rest on the drawing of inferences, albeit those are obviously available to be drawn given the whole of the evidence.

It is well established that the use of intoxicants and narcotics in the safety sensitive environs of a railway is clearly a serious disciplinary offence, generally inconsistent with continued employment. That is particularly so when the offending employee has not acknowledged the seriousness of his actions or admitted to any wrongdoing, as is the case in the grievance at hand. (See, generally, **CROA 3377** and **3378.**)

For all of the foregoing reasons the grievance must be dismissed.

April 20, 2004

(signed) MICHEL G. PICHER
ARBITRATOR