CANADIAN RAILWAY OFFICE OF ARBITRATION AND DISPUTE RESOLUTION

CASE NO. 3450

Heard in Montreal on Wednesday, September 15, 2004

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Dismissal of Claude Roberge, PIN 826051, yard foreman at Joffre, as of March 31, 2004.

UNION'S STATEMENT OF ISSUE:

On September 6, 2002, Claude Roberge, the Company and the Union ratified a reinstatement agreement for Mr. Roberge.

On the morning of January 27, 2004, while on duty, Carmen Fréchette, a Company nurse working at Joffre Yard, asked Mr. Roberge to submit to a routine exam, as stipulated in the contract which is being taken into account above. Mr. Roberge advised Ms. Fréchette that 10 to 12 days ago he had smoked a marijuana joint and that the medical exam could still detect traces.

Mr. Roberge was suspended from duty at the end of his shift until his investigation which was conducted on March 18, 2004, after which, he was advised that he was being dismissed for violating his contract as of March 31, the period from January 27 to March 31 having served as his suspension term.

The Union is appealing this decision as the circumstances surrounding this incident does not justify a dismissal.

The Company rejected the appeal.

FOR THE UNION:

(SIGNED) R. LEBEL
GENERAL CHAIRMAN, GENERAL COMMITTEE OF ADJUSTMENT

Appearing on behalf of the Company:

D. Laurendeau	– Manager – Labour Relations, Montreal
D. Gagné	– Manager – Labour Relations, Montreal
P. Dery	– Assistant Superintendent

Appearing on behalf of the Union:

R. LeBel	– General Chairman, City of Quebec
C. Belzill	– Local Chairman, Quebec City
J. N. Paquette	– Local Chairman, City of Quebec
R. Michaud	– Chairman, Legislative Board, Montreal
G. Couture	– Observer
C. Roberge	– Grievor

AWARD OF THE ARBITRATOR

It is agreed that the grievor used marijuana, once, during a family party, in violation of the terms of the employment contract which he signed with the Company on September 6, 2002.

The evidence shows that the contract was the result of Mr. Roberge's decision to voluntarily refer to the employee assistance program due to his problems with alcohol use in September 2002. It is agreed that he had undergone five drug and alcohol screening tests without a positive result between August 29, 2002 and September 25, 2003. According to the grievor, during the Christmas season he was experiencing difficulty facing the anniversary of his wife's death, and he smoked a joint on the evening of a family gathering at his home. Not long after, when the employer's nurse asked him to undergo another screening test, he admitted his consumption, which resulted in his termination.

The decisions of this office are categorical in affirming that the arbitrators accord the greatest respect to employment contracts, such as the one in this instance (**CROA 2746, 2632** and **2595**). However, the rule is not inflexible, especially when it comes to an employee who has suffered from a known incapacity. Accordingly, the Arbitrator expressed the following in **CROA 3269**:

> Canadian jurisprudence does not, however, confirm that the violation of an agreement of the type which is the subject of this grievance must automatically result in an employee's termination. It is well established that each case must be reviewed on the merits of its own particular facts, and that in any event the application of any such agreement cannot be in violation of the duty of accommodation owed to an employee with a disability, in keeping with human rights codes such as the **Canadian Human Rights Act**. (**Re Toronto Transit Commission and Amalgamated Transit Union, Local 113**, (1998) 75 L.A.C. (4th) 180 (Davie); **Re Regional Municipality of Ottawa-Carlton and Ottawa-Carlton Public Employees Union, Local 503** (2000) 89 L.A.C. (4th) 412 (Mitchnick); **Re Camcar Textron Canada Ltd. and United Steelworkers of America, Local 3222** (2001) 99 L.A.C. (4th) 305 (Chapman)).

(Also see **CROA 2803**.)

The Arbitrator is of the opinion that exceptionally, this case justifies a last chance be granted. Mr. Roberge is an employee with more than 30 years of service, who was hired on December 13, 1973. He has been a good employee, and his record does not indicate any incidents of alcohol abuse or abuse of any other substance at work. In the incidents that concern us, he showed remarkable honesty and he did not attempt to deceive his employer. Furthermore, the evidence establishes that immediately after the incident of his drug use, he sought help at a support centre, Villa Ignatia, for a few days. In addition, there was never any question about a relapse into alcohol consumption, a problem for which he sought help at Villa Ignatia before establishing his employment

contract. There is therefore good reason to conclude that the grievor is very serious about acknowledging and controlling his substance abuse problem.

All in all, the Arbitrator deems that it was a one-time exception to the efforts and healthy habits the grievor has adopted and faithfully followed over these last few years. In these circumstances there is thus good reason to believe that he can be reintegrated into his position, always subject to the conditions protecting the interests of the Company.

The grievance must therefore be allowed, in part. The Arbitrator orders the grievor to be reintegrated into his duties, without loss of seniority and without compensation for his loss of earnings and fringe benefits. The period between his dismissal and his return to work shall be noted in his disciplinary record as a suspension. Furthermore, as a condition of reintegration, Mr. Roberge must agree to be subject to the same conditions as those in his employment contract of September 6, 2002, and for an additional two-year period as of the date of his reintegration into his employment. It goes without saying that a subsequent breach of these obligations would result in the most serious of consequences with regards to his employment.

September 20, 2004

(signed) MICHEL G. PICHER
ARBITRATOR