

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3587

Heard in Montreal, Wednesday 11 October 2006

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED STEELWORKERS OF AMERICA (LOCAL 2004)

EX PARTE

DISPUTE:

The assessment of fifty-nine (59) demerits to Mr. Serge Michaud.

UNION'S STATEMENT OF ISSUE:

The grievor was assessed fifty-nine (59) demerits for an alleged violation of Rule E of the CROR and the Company policy regarding failure to report an unsafe situation involving alcohol or drugs that may cause a potential unsafe situation causing harm to a co-worker on April 13, 2005.

The Union filed a grievance regarding this matter citing violations of articles 18.2(d), 18.4 and 18.6 of agreement 10.1.

The Union has argued that the Company's investigation revealed no evidence that the grievor was in possession of or used illegal drugs or knew of any other employees using illegal drugs while on the job. The Union has argued that the discipline is severe and unwarranted and should be immediately removed from the grievor's record.

The Company submits that the grievor is culpable of the discipline [sic] and that it has not violated the collective agreement.

The parties have not been able to resolve the dispute to date.

FOR THE UNION:

(SGD.) A. KANE
STAFF REPRESENTATIVE

There appeared on behalf of the Company:

- C. Gilbert – Manager, Labour Relations,
- A. de Montigny – Sr. Manager, Labour Relations, Montreal
- D. Morin – Assistant Chief Regional Engineering
- F. Morgan – CN Police

And on behalf of the Union:

- A. Kane – Staff Representative, Vancouver
- J. Dinnery – President, Local 2004, Edmonton
- J. Vukoja – Vice-President, Sudbury
- D. White – Witness
- S. Michaud – Grievor

AWARD OF THE ARBITRATOR

The facts in the instant case are essentially the same as those related in **CROA&DR 3586**, and are hereby adopted for the purposes of this award. The grievor was the driver of a transport shuttle bus which was the subject of a police raid and search on April 13, 2005. That search revealed a significant quantity of marijuana on the bus, which was traced to the possession of two employees. Additionally, all employees in the extra gang crew, numbering some twenty-two were interviewed and subjected to drug testing. The grievor was interviewed and denied any knowledge of drugs on the bus. Further, his drug test returned a negative result.

The only evidence which the Company can assert against Mr. Michaud is that an anonymous informant indicated to the CN Police that the shuttle bus was the venue for the selling or exchanging of drugs in the workplace. Indeed, at least one employee was found to be in possession of drugs of a sufficient quantity for the purposes of trafficking, and subsequently resigned from Company service.

Bearing in mind that the standard of proof in a serious charge must be commensurate with the gravity of the offence, the Arbitrator finds that the evidence offered by the Company is insufficient to establish, on the balance of probabilities, that the grievor was aware that there were drugs on his bus at the time of the raid, or indeed at any other time. It is entirely plausible that employees might in fact have exchanged drugs on the bus in such a manner as would not have been overheard or observed by Mr. Michaud, as driver of the vehicle. While the Company may have a basis for strong suspicions, it is not open to a board of arbitration to convert suspicion, however strong, into legal conclusions.

In the result, I must find that the Company has not discharged the burden which is upon it to demonstrate, on the balance of probabilities, that the grievor was aware of the drugs which were on the bus which he was driving, the direct possession of which has in fact been traced to other employees. In the circumstances, therefore, the discipline cannot stand. The Arbitrator directs that the fifty-nine demerits assessed against Mr. Michaud be stricken from his record forthwith.

October 16, 2006

(signed) MICHEL G. PICHER
ARBITRATOR