

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

CASE NO. 3596

Heard in Montreal, Wednesday, 13 December 2006

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION**

EX PARTE

DISPUTE:

Dismissal of Assistant Thermite Welder Mr. Brian Migwans.

UNION'S STATEMENT OF ISSUE:

The Union acknowledges that the grievor was under the influence of alcohol while on duty on July 8, 2006. However, the Union contends that mitigating factors existed that should have service to reduce the discipline assessed. The grievor is a long service employee with a service date of September 28, 1982. The grievor was assessed dismissal twenty years ago, in 1986, for an alleged Rule G violation. However, he was reinstated. Other than that – and except for five demerits assessed in August of 1998 – the grievor has never been the recipient of Company discipline. During the investigation, the grievor willingly admitted, and took responsibility for, the fact that he was under the influence on July 8, 2006. Furthermore, he requested EFAP assistance. However, he was denied.

The Union's requested remedies: The grievor be reinstated into Company service forthwith and that he be given the opportunity to avail himself immediately of the Company's EFAP program.

The Company denies the Union's contentions and declines the Union's requests.

FOR THE UNION:

(SGD.) WM. BREHL
PRESIDENT

There appeared on behalf of the Company:

A. Azim – Labour Relations Officer, Calgary
M. Moran – Labour Relations Officer, Calgary

S. Seeney – Manager, Labour Relations, Calgary

And on behalf of the Union:

Wm. Brehl – President, Ottawa

D. Brown – Counsel

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor did violate Rule G when he appeared for work under the influence of alcohol in the early morning of July 8, 2006. His state of impairment was verified by a reasonable cause urinalysis test for alcohol impairment which he agreed to undertake.

The Company's representative submits that the presumptive consequence for a violation of Rule G, as reflected in prior awards of this Office, is discharge. She submits that there is no basis for substituting any other penalty in the case at hand, having particular regard to the fact that the grievor was previously discharged for a violation of Rule G some twenty years ago, in 1986. She also questions the degree of candour reflected in the statements of the grievor during the course of his disciplinary investigation.

The Union's representative submits that discharge is an excessive consequence in all of the circumstances. Firstly, he notes that the grievor is a long service employee, first hired in September of 1982. While the Union does not dispute the fact that the grievor violated Rule G in 1986, it stresses that following his reinstatement he registered

twenty very positive years of service with the Company, without any further similar infraction until the events giving rise to this grievance. Its representative stresses that the grievor was in fact a productive and positive employee who incurred discipline, apart from the prior Rule G violation, only once over the entire span of his nearly twenty-five years of employment, having incurred twenty demerits for a rule violation in 1998.

This Office well appreciates the concerns for safety which motivate the Company's position in the case at hand. As prior awards of this Office have demonstrated, a person with a prior record of Rule G violations cannot expect an endless chain of last chances for the same infraction. However, the Arbitrator is compelled to agree with the Union that the case at hand is somewhat different from the norm of those which involve an employee who fails to live up to a last chance agreement.

The grievor violated Rule G some twenty years ago. The Company agreed to his reinstatement, presumably on the understanding that he would be of good behaviour and not repeat his offence. It appears that he succeeded in that regard for a span of not less than twenty years. Nor is there any evidence before the Arbitrator to suggest or confirm that the grievor suffers from alcoholism or alcohol dependence. In fairness, the evidence is simply inconclusive either way with respect to that question. It is the Union's position that Mr. Migwans is not an alcoholic. It points to the fact that he was one of a number of employees who consumed a substantial quantity of beer in a hotel room accommodation on the night of July 7, 2006. Its representative stresses the Company's failure to aggressively pursue four other employees who admitted to drinking, albeit in

lesser quantities, on the night before. He submits that the assessment of twenty-five demerits against them for drinking in a hotel accommodation contrary to Company rules suggests a grave inequity in the alleged singling out of Mr. Migwans. In addition to the length and quality of the grievor's prior service, the Union also points to the fact that Mr. Migwans was honest and forthright in his responses to the Company with respect to his consumption of alcohol, his willingness to undergo an alcohol test by means of urinalysis and his admission, during the course of his disciplinary investigation, that he realized that he had a problem. It also notes that he has secured alternate employment since his termination, as evidenced by a positive letter of reference.

In the Arbitrator's view the legitimate interests of the Company can be adequately protected within the framework of a reduced penalty. While this Office would obviously be less inclined to consider such an alternative if the grievor had committed his first violation of Rule G in a more recent time period, the fact of twenty years of service without any similar infraction cannot be lightly disregarded, and does weigh in mitigation, along with the overall length and quality of Mr. Migwans' service to the Company.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without compensation for wages and benefits lost. His reinstatement shall, however, be conditional on his accepting to undergo full medical assessment for any drug or alcohol addiction or dependence. Should that assessment confirm that he has an addiction or dependence, his reinstatement shall further be conditioned upon his agreeing to follow

any program of rehabilitation established by the assessing authority and to provide written documentation of his ongoing participation in any such program. Regardless of the assessment outcome, the grievor shall also be subject to random, unannounced alcohol and drug testing at the option of the Company, to be administered in a non-abusive manner, for a period of not less than two years from the date of his reinstatement.

December 18, 2006

(signed) MICHEL G. PICHER
ARBITRATOR