

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

**CASE NO. 3598**

Heard in Montreal, Wednesday, 13 December 2006

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**UNITED TRANSPORTATION UNION**

**EX PARTE**

**DISPUTE:**

The dismissal of Conductor Wingie April 04, 2006, for failing to comply with a Company officer's instructions and violation of the Company's policy to prevent workplace alcohol and drug problems, following your refusal to submit to a reasonable cause drug and alcohol test on March 28, 2006.

**COMPANY'S STATEMENT OF ISSUE:**

On March 28, 2006, Yard Conductor G. Wingie was called to work on the 10:30 Bissell yard assignment with Locomotive Engineer Smart and Yard Helper Bernardin. The crew arrived at the pulldown office obtained necessary documentation and were then transported to their locomotive consist by Supervisor Halbauer. The crew proceeded to couple their transfer and operate the movement to Bissell Yard. On arrival at Bissell Yard the transfer movement stopped prior to yarding and Conductor Wingie detrained from the locomotive consist. The local trainmaster responsible for the Bissell Yard operations was standing near the yard track lead and approached the grievor with the intention of determining why the transfer had stopped.

The grievor was reported to be unsteady in his stance and incoherent in his speech as well as hard to understand. The grievor claimed he was not feeling well and was booking sick. During this conversation the trainmaster reported smelling alcohol on Mr. Wingie's breath. The grievor was asked if he had been drinking alcoholic beverages, he reported he had been drinking the previous night. The grievor was interviewed by two additional Company officers and both confirmed observations of smell of alcohol on his breath. Mr. Wingie was instructed he would be required to submit to a reasonable cause drug and alcohol test on several occasions and he refused to comply. A formal investigation was complete and Mr. Wingie was discharged from service.

The Union contends: the grievor is a valued, long service employee whose discipline file was clear. The Company held Mr. Wingie captive for several hours and denied him his right to have Union representation. There are mitigating factors involved. The Union does not agree with the discipline.

The Company disagrees with the Union's contentions and maintains the grievor was properly disciplined in the circumstances.

**FOR THE COMPANY:**

**(SGD.) K. MADIGAN**

**VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

- K. Morris – Manager, Labour Relations, Edmonton
- D. VanCauwenbergh – Sr. Manager, Labour Relations, Toronto
- D. Carlson – Trainmaster, Edmonton
- B. Tessier – CN Police Inspector,

And on behalf of the Union:

- D. Ellickson – Counsel, Toronto
- B. R. Boechler – General Chairperson, Edmonton
- R. A. Hackl – Vice-General Chairperson

**AWARD OF THE ARBITRATOR**

Upon a review of the material submitted the Arbitrator finds that the grievor did appear for work unfit for duty on March 28, 2006. The evidence also establishes that Mr. Wingie did violate the Company's drug and alcohol policy. He was therefore liable to the assessment of discipline.

In the circumstances, having particular regard to the grievor's twenty-two years of service and his prior disciplinary record, the Arbitrator determines that this is an appropriate case for a substitution of penalty, subject to conditions to protect the Company's legitimate interests. The grievor shall therefore be reinstated forthwith into his employment, without loss of seniority and without compensation for wages and benefits lost. His reinstatement shall be conditional upon his accepting to be subject to

full medical assessment for the purposes of determining whether he is subject to any drug or alcohol addiction or dependence. Should the assessment indicate that he is, his reinstatement shall be conditional upon his following any course of treatment that is directed by the assessing authority and any documentary or reporting obligations which might be related thereto. His reinstatement is also conditioned, without reference to the outcome of any assessment, on his agreeing to be subject to unannounced random drug and alcohol testing for a period of not less than two years from the date of his reinstatement into employment.

December 18, 2006

**(signed) MICHEL G. PICHER**  
ARBITRATOR