CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 3701

Heard in Montreal Tuesday, 14 October 2008

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discharge of Locomotive Engineer Mr. Louis Sonier on March 03, 2008, for violation of CROR rule 429 in operation of train E463 past a stop signal 397A at Union Station in Toronto on February 07, 2008. Violation of CROR rule G and Company Drug and Alcohol Policy on February 07, 2008.

JOINT STATEMENT OF ISSUE:

On February 07, 2008 Mr. Sonier, a locomotive engineer from Toronto South, was involved in a violation of CROR rule 429 in operation of train E463 past a stop signal at Union Station in Toronto. Following the incident he was required to submit to a drug and alcohol test. He tested non-negative (positive) for THC.

Following investigations of the matter, Locomotive Engineer Sonier was discharged effective March 03, 2007.

The Union submits that there was no just cause for discharge in this case and further contends that there were mitigating factors which should be taken into consideration that would warrant the substitution of the discipline assessed to another form of discipline.

The Company disagrees with the Union and maintains that the discipline assessed in is situation was both warranted and reasonable.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) P. VICKERS	**(SGD.) B. HOGAN**
GENERAL CHAIRMAN	**MANAGER, LABOUR RELATIONS**

There appeared on behalf of the Company:

B. Hogan	– Manager, Labour Relations, Toronto
D. VanCauwenbergh	– Director, Labour Relations, Edmonton
R. Helmle	– Manager, CMC, Eastern Canada, Toronto

And on behalf of the Union:

J. G. Morrison	– Counsel, London
P. Vickers	– General Chairman, Sarnia
L. Sonier	– Grievor

AWARD OF THE ARBITRATOR

It is common ground that the grievor did violate CROR Rule 429 when he operated his GO Train consist past stop signal 397A at Union Station on February 7, 2008. Nor is it disputed that he tested positive for THC in a subsequent urinalysis test.

Dealing firstly with the issue of the positive drug test, it is well established that such a test does not, of itself, establish impairment. At most, a positive urinalysis test would indicate that the subject ingested marijuana at an earlier point, perhaps days or weeks in the past, without any indication as to the precise time, place or quantity of the consumption. Standing alone, therefore, a positive drug test cannot be just cause for discipline, even if it may, technically, be a violation of the Company's Alcohol and Drug Policy (**CROA 3668** and **3691**).

It is therefore important to consider whether there is any other corroborative evidence that would suggest impairment on the part of Locomotive Engineer Sonier. The evidence is remarkably devoid of any such proof. By the Company's own admission, the observations of supervisors and others dealing with Mr. Sonier gave no reason to suspect impairment, and indicated no outward signs of bloodshot eyes, erratic behaviour or any other indicia of impairment by reason of the consumption of marijuana. In the light of all of the foregoing evidence, the Arbitrator cannot sustain the Company's

decision to impose a discharge upon the grievor for the mere fact that he tested positive for marijuana in the post-incident test which was administered.

The real issue is the appropriate measure of discipline for the violation of CROR rule 429 in all of the circumstances. This Office has had prior occasion to exhaustively review the history of discipline for violations of CROR 429 in **CROA 2356**. There it was found that as a general matter violations of rule 429 have not, in and of themselves, resulted in automatic dismissal, albeit they have been found to be deserving of a high level of discipline.

In the instant case there are mitigating factors to consider. It does not appear disputed that on the day in question the GO train being operated by the grievor had stood idle for some time in relatively cold and snowy conditions. It is not disputed that the braking system of the train would have been “slick”, particularly as the grievor had only operated the train a relatively short distance before making his brake application at Union Station. There would, in other words, have been some adverse impact on the train’s braking ability by reason of the cold and snowy condition of the equipment.

That fact does not, of course, excuse the grievor’s error. He knew, or reasonably should have known, that the wintry conditions required a greater degree of caution. In fact, it would seem that Locomotive Engineer Sonier made his brake applications at or about the same locations as he would normally do in better weather conditions, thereby failing to give due allowance to the icy conditions.

From the standpoint of aggravation, the Arbitrator must agree with the Company that the incident could have had catastrophic results. By allowing his movement to proceed some thirty-five feet beyond the ultimate stop signal, the grievor allowed his train to foul a main line used by other GO train movements. Had there been another train on that track at the same time a passenger train collision might have been unavoidable. From the standpoint of mitigation, it should also be noted that the grievor has a relatively positive disciplinary record over close to twenty years of service

For these reasons the Arbitrator is satisfied that while there are grounds for a reduction of penalty, a serious measure of discipline, in the form of a lengthy suspension, must nevertheless be justified. The Arbitrator therefore directs that the grievor be reinstated into his employment forthwith, without compensation for any wages or benefits lost and without loss of seniority. The grievor's reinstatement into employment shall be conditional upon his accepting to be subject to random alcohol and drug testing, to be administered in a non-abusive fashion, for a period of two years from the date of his reinstatement. Any refusal to undergo such a test or any positive test result shall be grounds for his immediate termination.

October 20, 2008

(signed) MICHEL G. PICHER
ARBITRATOR