

CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3807

Heard in Montreal, Tuesday, 13 October 2009

Concerning

VIA RAIL CANADA INC.

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL
WORKERS UNION OF CANADA (CAW-CANADA)**

DISPUTE:

Concerning the dismissal of Mr. Sean Casey.

JOINT STATEMENT OF ISSUE:

Following an investigation statement held on June 17, 2009, Mr. Sean Casey was dismissed from the Corporation for allegedly using an illegal substance during his tour of duty on Saturday, June 13, 2009.

It is the Union's position that the grievor is innocent of the charges against him and that the Corporation's entire case is based on the one statement from a manager which the Union contends is false and misleading. In the Union's opinion, the employer has failed to show by clear and cogent evidence that the grievor is guilty of any wrongdoing. Moreover, the Corporation failed to properly dismiss Mr. Casey using the protocols established over many years.

The Corporation contends that Mr. Casey's termination on June 19, 2009 is justified.

The Union seeks reinstatement of Mr. Sean Casey without loss of wages, benefits or seniority.

FOR THE UNION:

FOR THE CORPORATION:

(SGD.) R. FITZGERALD
NATIONAL REPRESENTATIVE

(SGD.) B. A. BLAIR
SR. ADVISOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

B. A. Blair – Sr. Advisor, Labour Relations, Montreal
A. W. Court – Manager, Customer Experience, Toronto

And on behalf of the Union:

D. Andru – Regional Representative, Toronto
R. Fitzgerald – National Representative, Toronto
J. Almdal – Regional Representative, Toronto
S. Casey – Grievor

AWARD OF THE ARBITRATOR

The submission of the Corporation is that it is established that the grievor smoked marijuana on Corporation property and while on duty on June 13, 2009. The evidence establishes that Supervisor Aaron W. Court is, among other things, responsible for the servicing of Transcontinental Train No. 1 at the Toronto Maintenance Centre. The grievor, Mr. Casey, held a temporary position of Stock Checker / General Operations Clerk, and as such was responsible for loading supplies onto the dining car of Train No. 1.

On Saturday, June 13, 2009 Mr. Court came to realize that supplies for the dining cars had not yet been delivered to the train, and developed concerns. While the dining car supplies were scheduled for delivery at approximately 19:00, at 19:45 he realized that the delivery had not yet been made. He sought out Mr. Casey to inquire as to the reason for the delay. He then observed Mr. Casey exiting his cube truck ESC vehicle and walking towards his car in the employee parking lot. Mr. Court relates that he walked towards Mr. Casey to speak with him and as he approached his car from the rear Mr. Casey was half seated inside and outside the car in the driver's seat. As he approached from the rear Mr. Court maintains that he saw the grievor holding a marijuana pipe in his left hand and a lighter in his right hand, in the process of lighting the pipe and inhaling. In addition, Mr. Court states that he could smell the distinct odour of marijuana.

It does not appear disputed that the grievor then deposited objects inside his car and, with an appearance of being surprised, got out of his car and turned to speak to Mr. Court. Mr. Court then accused him of smoking marijuana which, according to Mr. Court's account, the grievor did

not deny. Nor, it appears, did he volunteer to show Mr. Court the contents of his car. Based on what he had seen, Mr. Court removed Mr. Casey from service and he was sent home. When he attempted to attend work the next day Mr. Case was advised by another supervisor that he was held out of service pending an investigation.

At the investigation, held on June 17, 2009 Mr. Casey denied having smoked marijuana and maintained that he was simply having a cigarette in his car. He suggested that because it was an Indian reservation cigarette it would have had a relatively strong odour. Mr. Casey further suggested that his car key chain may have created the impression of a pipe.

The Arbitrator has substantial difficulty with the credibility of Mr. Casey's explanation. While the Union submits that Mr. Court should have seized the pipe and/or marijuana as corroborative proof of what he asserts in his written report, that does not eliminate the probative value of credible eye witness testimony. Having reviewed the materials I am satisfied that Mr. Court did surprise Mr. Casey in his automobile, that he had a clear view of what Mr. Casey was doing and that the sight of a marijuana pipe and the relatively distinct smell of marijuana were readily apparent to him as he observed Mr. Casey.

Nor can the Arbitrator give substantial weight to the Union's assertion that there was a violation of article 24.2 of the collective agreement by reason of the fact that the written notice of discharge did not reach the grievor until some twenty-one days after the disciplinary investigation. That article provides, in part, as follows:

24.2 ... No discipline will apply if discipline is not assessed within 21 days from the date the statement was taken. ...

It is not disputed that two days following the disciplinary investigation a meeting was convened which included Corporation representatives, the grievor's Union representative and the grievor himself. At that point Mr. Casey was told that he was terminated effective immediately. In the Arbitrator's view there can be little doubt but that the Corporation had assessed and communicated the assessment of discipline to him, well within the twenty-one day period contemplated within article 24.2 of the collective agreement.

I am also satisfied that the grievor, operating a cube truck and moving within an area of live tracks, did occupy a sufficiently safety sensitive position incompatible with drug use . The possession and consumption of marijuana at work in such a circumstance is plainly inconsistent with the most basic standards of safety. The seriousness of the infraction is, in the Arbitrator's view, sufficient to justify the ultimate penalty of termination, notwithstanding the grievor's prior disciplinary record. Such mitigating factors as may be present in the case at hand are simply not sufficient to outweigh the very serious nature of the offence committed.

For all of the foregoing reasons the grievance is dismissed.

October 29, 2009

(signed) MICHEL G. PICHER
ARBITRATOR