

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

CASE NO. 3928

Heard in Montreal Tuesday, 14 September 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Discharge of Conductor Gordon Rodgers following post incident testing when he tested positive for the presence of illegal drugs on January 19th, 2009.

COMPANY'S STATEMENT OF ISSUE:

On January 19, 2009, Conductor Rodgers was involved in an incident in the Kamloops yard and was required under CN's Drug and Alcohol Policy to undergo post incident drug and alcohol testing. After completing an oral fluids drug test, Conductor Rodgers tested positive for an illegal drug. On January 26, 2009, a formal investigation was held where Conductor Rodgers admitted consuming marijuana. Conductor Rodgers was discharged from the Company for failure to comply with CN's Alcohol and Drug Policy.

The Union contends that there was no reasonable cause to demand a post incident drug test from the grievor, that the grievor demonstrated no signs of impairment and that the grievor was honest and forthright during his statement and admitted that he used marijuana while on days off. The Union requests that Conductor Rodgers be reinstated without loss of seniority and be made whole.

The Company disagrees.

FOR THE COMPANY:

(SGD.) P. PAYNE

FOR: DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

S-P Paquette	– Counsel, Montreal
D. Crossan	– Manager, Labour Relations, Prince George
J. Orr	– Assistant Vice-President, BC South,
K. Morris	– Sr. Manager, Labour Relations, Edmonton
P. Payne	– Manager, Labour Relations, Edmonton
K. Smolynec	– Sr. Manager, Occupational Health, Edmonton

And on behalf of the Union:

M. A. Church	– Counsel, Toronto
B. R. Boechler	– General Chairman, Edmonton
R. A. Hackl	– Vice-General Chairman, Saskatoon
B. Willows	– General Chairman, Edmonton
J. Robbins	– General Cairman, Sarnia
P. Vickers	– General Chairman, Sarnia
G. Rodgers	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that as a result of an incident in the Kamloops Yard on January 19, 2009 the grievor, Conductor Rodgers, was compelled to undergo drug and alcohol testing. As a result of his non-negative initial screening test he was required to provide an oral fluid sample. That sample was returned as positive for the presence of marijuana.

The facts so disclosed are disturbing. While the grievor asserts that he was not impaired, the test results speak for themselves. While various statements of the grievor placed his previous consumption of marijuana at different times, including the day previous, it appears that he did disclose in an interview with Dr. Robert Baker that he had in fact consumed marijuana on the day of the incident, some three hours before reporting for duty. It does not appear disputed that the effects of marijuana can be felt for some four to eight hours after the point of consumption.

What the case discloses is that the grievor, knowing that he was subject to being called to duty, consumed marijuana and reported for duty in a highly safety sensitive position under its influence. In the Arbitrator's view such conduct demonstrates gross irresponsibility incompatible with employment in the highly safety sensitive industry of

railway operations. The grievor's willingness to work under the impairment of marijuana does, in my view, call into question the viability of the grievor's ongoing employment. To put it simply, he knowingly created a situation of extreme peril by deliberately placing himself on duty while impaired by an illegal drug.

On the whole the Arbitrator cannot see an appropriate basis for the reinstatement of the grievor in the case at hand. His accounts of when he consumed marijuana appear to have been inconsistent, but more fundamentally, I am compelled to conclude that the grievor put himself and others in danger by placing himself on duty while under the effects of marijuana. I can attach no weight to his claims that while he consumed marijuana he was not in fact impaired. The science and technology in relation to saliva drug testing confirm the contrary. While the grievor had some twenty-two years of service at the time of his termination, the gravity of his offence cannot be understated or mitigated by that fact alone.

For the foregoing reasons the grievance must be dismissed.

September 20, 2010

(original signed by) MICHEL G. PICHER
ARBITRATOR