

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

**CASE NO. 3929**

Heard in Montreal Tuesday, 14 September 2010

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**EX PARTE**

**DISPUTE:**

The discharge of Conductor "R" for accumulation of demerits in excess of sixty and violation of the Company's Drug and Alcohol Policy.

**UNION'S STATEMENT OF ISSUE:**

On March 16, 2009 the grievor was conductor on train A4435115 and engaged in setting out cars in Walker Yard. In the performance of these duties a derailment occurred. Following an investigation, it was determined that the grievor had not properly adhered to CROR Rule 104.4(b), causing the derailment. The grievor was assessed 25 demerits, bringing him to the level of 70 demerits.

Following the incident, the grievor was required to undergo drug and alcohol testing. The grievor tested positive for a prohibited substance in both the urine and saliva tests. An investigation was held into this matter, following which the grievor was assessed a discharge for violation of the Drug and Alcohol Policy.

Since the incident the grievor has sought and received treatment and counselling and has successfully remained drug free. The Union submits that the grievor acknowledges his error, is remorseful and has successfully changed his lifestyle in an effort to improve himself. Accordingly, the Union submits that the grievor has learned from this serious error in judgement and is deserving of another opportunity to demonstrate that he can be a productive employee.

The Company disagrees.

**FOR THE UNION:**

**(SGD.) B. R. BOECHLER**  
GENERAL CHAIRMAN

There appeared on behalf of the Company:

- P. Payne – Manager, Labour Relations, Edmonton
- K. Morris – Sr. Manager, Labour Relations, Edmonton
- D. Crossan – Manager, Labour Relations, Prince George
- J. Orr – Assistant Vice-President, BC South,

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
- Employee R – Grievor

### **AWARD OF THE ARBITRATOR**

The material before the Arbitrator confirms that the grievor suffered from an addiction to cocaine for a number of years. The record discloses that on March 15, 2009 the grievor caused a derailment of ten loaded grain cars by reason of having failed to line a cross-over switch as required. He was then required to undergo drug and alcohol testing, for which the results proved positive for cocaine. Following an investigation the grievor was assessed twenty-five demerits for his violation of rule 104.4(b) of the CROR as a result of which he was then discharged for the accumulation of demerits in excess of sixty. He was also discharged for violation of the Company's Drug & Alcohol policy.

If this case was simply about an employee being at work in a safety sensitive position while impaired by a narcotic, the grievor's case would be difficult to make. However, the record discloses much more. The material before the Arbitrator confirms, beyond controversy, that following his discharge the grievor followed an intensive programs of rehabilitation and has succeeded in bringing his cocaine addiction under

control. Remarkably, his success in that regard and his fitness to return to work are confirmed in written communications from three separate doctors from the Company's own Occupational Health and Service, including its Chief Medical Officer. The medical evidence before the Arbitrator is unequivocal, including the opinion of the Company's own doctors that the grievor has undergone a successful rehabilitation and is fit to work. It may be noted that their opinions are, in part, couched in terms of proper conditions and ongoing monitoring being put in place.

The grievor is an employee of some twenty-five years' service. While it is true that he had an extensive disciplinary record, it is not insignificant that that record is almost wholly comprised of chronic attendance problems of the kind commonly associated with the difficulties of employees who suffer an addiction. R's record discloses that he had only one operating rules infraction over twenty-five years of service, prior to the incident which led to his discharge. In the circumstances I am satisfied that this is an appropriate case for a substitution of penalty, albeit on conditions fashioned to protect the Company's interests.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment, without compensation for wages and benefits lost, without loss of seniority and subject to the following conditions. As a condition of reinstatement the grievor shall abstain from the consumption of any illicit drugs or narcotics, so long as he remains employed by the Company. For a period of two years he shall be subject to random, unannounced drug testing, to be administered in a non-

abusive fashion. For the same period he shall maintain involvement with a support group, such as Narcotics Anonymous or Alcoholics Anonymous, confirming to the Company and to the Union his participation in such activities by way of written quarterly reports from an officer or appropriate representative of such agency. A failure to honour the conditions described herein, including a positive drug test, shall be grounds for the grievor's discharge.

September 20, 2010

**(original signed by MICHEL G. PICHER**  
**ARBITRATOR**