

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4047

Heard in Montreal, 12 October 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED STEELWORKERS UNION – LOCAL 2004

DISPUTE:

Mr. K. Cobham was discharged for “Violation of CN Drug and Alcohol policy and rule G”.

JOINT STATEMENT OF ISSUE:

On May 17, 2010, the grievor was discharged for “Violation of CN Drug and Alcohol policy and rule G”. The Union filed a grievance regarding this matter.

The Union submits that Mr. Cobham has 21 years of seniority and has completed his drug recovery program successfully and continues to attend AA meetings.

The Union has requested that he be immediately reinstated with full redress.

The Company disagrees and has declined the Union’s grievance.

FOR THE UNION:
(SGD.) M. PICHÉ
STAFF REPRESENTATIVE

FOR THE COMPANY:
(SGD.) S. BLACKMORE
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

C. Gilbert	– Manager, Labour Relations, Montreal
S. Grou	– Sr. Manager, Labour Relations, Montreal
S. Blackmore	– Manager, Labour Relations, Edmonton
R. Haggart	– Assistant Chief Engineer, Toronto
W. Dawson	– Track Supervisor, Toronto
B. Laidlaw	– Manager, Labour Relations, Winnipeg
K. Smolyneq	– Sr. Manager, Occupational Health, Montreal

There appeared on behalf of the Union:

M. G. Piché	– Staff Representative, Toronto
R. Tompkins	– Chief Steward, GLR
K. Cobham	– Grievor

AWARD OF THE ARBITRATOR

The evidence in this grievance discloses that on the morning of April 5, 2010, the grievor commenced his tour of duty at 06:00 while under the influence of alcohol. At 07:20 he was observed to be flush-faced and red eyed, while giving off a strong odour of liquor. Several hours later he registered 0.04% BAC on a breathalyser sample taken by CN police at 10:10. By the normal estimates of alcohol metabolism in a person of his size, it is probable that he would have registered a higher BAC rate, perhaps as high as 0.08 when he commenced his tour of duty. Although Mr. Cobham initially denied having consumed alcohol other than in a small quantity the evening before, at the arbitration hearing his Union conceded that he had in fact consumed an excessive amount of wine and beer on the evening prior and does not dispute that he was in violation of the Company's Drug & Alcohol Policy and Rule G upon his attendance at work on the morning of April 5, 2010.

There is no prior record of drug or alcohol problems in the grievor's twenty-two years of service with the Company, service during which he had never received disciplinary demerits. There is no evidence of alcoholism or an ongoing alcohol abuse problem with the grievor. He has, however, developed an addiction to pain killers, as a result of which he has followed a methadone treatment program since November of 2006.

The Arbitrator accepts the seriousness of the grievor's actions in attending at work in a safety sensitive environment while under the influence of alcohol. However, given his extremely positive disciplinary record and length of service, coupled with the fact that this is a first infraction with respect to any abuse of alcohol or drugs related to his work performance, I am satisfied that this is an appropriate case for a substitution of penalty.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for wages and benefits lost. The discharge recorded against his record shall be substituted by a suspension covering the period between his termination and reinstatement.

October 17, 2011

(signed) MICHEL G. PICHER
ARBITRATOR