

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4048**

Heard in Montreal, 12 October 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED STEELWORKERS UNION – LOCAL 2004

DISPUTE:

Mr. N. Sanzo was assessed 40 demerits for violation of GOI Safety rules / sleeping while on duty on January 15, 2010, which resulted in discharge for accumulation of 95 demerits. As well he was discharged for refusal to take a post-incident drug test on January 15, 2010.

JOINT STATEMENT OF ISSUE:

On February 1, 2010, the grievor was discharged further to the assessment of 40 demerits for “violation of GOI Safety rules / sleeping while on duty on January 15, 2010”, which resulted in the accumulation of 95 demerits and was discharged for “Refusal of post-incident drug test” on January 15, 2010.

The Union filed a grievance regarding this matter. The Union submits that Mr. Sanzo has 17 years of seniority and has completed his drug recovery program successfully.

The Union requests that the discipline be removed and that the grievor 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:

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

There appeared on behalf of the Union:

M. G. Piché	– Staff Representative, Toronto
R. Tompkins	– Chief Steward, GLR
N. Sanzo	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms, beyond doubt, that the grievor was found to be sleeping while on duty on January 15, 2010. It is also confirmed that he subsequently refused to undergo drug and alcohol testing, notwithstanding a clear directive from his supervisor.

In the Arbitrator's view the Company's reaction to the grievor's conduct is understandable. During the course of the incident in question he denied sleeping, and continued to do so during the ensuing disciplinary investigation. He also engaged in deliberate obfuscation during the course of his disciplinary investigation with respect to his reasons for declining to take a drug and alcohol test.

At the arbitration hearing the Union, on behalf of the grievor, presents a different case. It does not dispute that he was in fact asleep and that he improperly declined to undertake a drug test. The explanation now provided is that in fact the grievor had consumed illicit drugs the night before the sleeping incident which occurred on the morning of January 15, 2010, and that he was concerned that his drug use would be detected. In fact, the Union discloses that the grievor has suffered from an addiction to

cocaine. It has also been discovered that he suffers from a mild form of sleep apnoea as a result of which he now uses a CPAP machine which has improved his sleep.

The record does confirm that the grievor attended a total of some seventeen meetings with a Company EFAP officer for one-on-one counselling sessions between August and December of 2010, following his termination. He also contacted the Centre for Addiction and Mental Health for the assistance of an addiction therapist. He entered the out-patient program of the Centre and successfully completed a seventeen session program between October 21, 2010 and December 23, 2010.

The grievor's success with respect to avoiding illegal drugs and controlling his addiction is further confirmed by a note from his personal physician dated September 30, 2011 and, to some extent, bolstered by the documentary records of a series of negative drug tests taken by the grievor on some twenty-eight occasions over the past year.

In the Arbitrator's view this is an appropriate case for a substitution of penalty, albeit on terms that will protect the Company's interests. It is axiomatic that drug addiction is a disability which does merit accommodation, although it is clear that in the instant case the Company had no notice of the grievor's condition until the actual arbitration hearing. In the result, the Arbitrator directs that the grievor be reinstated into his employment forthwith, on condition that he accept that for a period of two years he shall be subject to alcohol and drug testing, to be conducted on a random,

unannounced and non-abusive basis. During that time the grievor shall refrain from consuming any illicit drugs. A positive drug or alcohol test shall result in his termination, as will his failure to abide by any reasonable request for testing. In addition, for the duration of the two year period the grievor shall participate in and attend regularly meetings of a recognized support group, such as Alcoholics Anonymous or Narcotics Anonymous, such involvement to be confirmed in writing to the Company and the Union not less than quarterly.

The forty demerits assessed against the grievor shall be removed from his record forthwith, with a suspension being substituted from the point of his discharge to his reinstatement, with his reinstatement to be without compensation for wages and benefits lost and without loss of seniority.

October 17, 2011

(signed) MICHEL G. PICHER
ARBITRATOR