

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4051

Heard in Montreal, Thursday, 13 October 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Discharge of Conductor John Monteith for violation of CN's Drug & Alcohol policy on February 6, 2011 while working as the conductor on train L57051-04 following post-accident testing reported as positive for cocaine.

COMPANY'S STATEMENT OF ISSUE:

On February 6, 2011, the grievor was assigned as the conductor on train L57051-04 departing Lillooet, BC travelling south towards Vancouver, BC. Due to the terrain all train movements operating over this territory are preceded by a hy-rail patrol vehicle.

At approximately 09:30 train L57051-04 departed Squamish yard and re-entered OCS territory at mile 38 of the Squamish Subdivision. Conductor Monteith contacted Patrol Foreman McLean regarding authority for train L57051-04 to proceed on the Squamish Subdivision. Foreman McLean had provided train L57051 with authority to proceed up to mile 32. At approximately 09:50 train L57051-04 collided with hy-rail vehicle being operated by Patrol Foreman McLean at mile 30.5 on the Squamish Subdivision.

Following the collision the grievor was required to undergo post-accident drug and alcohol testing. The grievor tested positive for cocaine on both the urine and oral fluids tests. The grievor was subsequently discharged for violation of CN's Drug & Alcohol policy while working as the conductor on train L57051-04 on February 6, 2011.

The Union contends that although the grievor admitted he used cocaine, he did not use cocaine while on duty and therefore a violation of the Company's Drug and Alcohol policy did not occur.

The Company maintains that the testing performed confirms a violation of the Company's Drug & Alcohol policy and the corrective action taken was warranted and justified in the circumstances.

FOR THE COMPANY:

(SGD.) D. CROSSAN
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Crossan	– Manager, Labour Relations, Edmonton
K. Morris	– Sr. Manager, Labour Relations, Edmonton
D. Brodie	– Manager, Labour Relations, Edmonton
R. Robinson	– Engine Service Officer, Western Canada, Edmonton
K. Smolynech	– Sr. Manager, Occupation Health, Edmonton

There appeared on behalf of the Union:

J. Holliday	– General Chairman, Vancouver
W. Martin	– Vice-General Chairman, Vancouver
B. R. Boechler	– General Chairman, Edmonton
R. A. Hackl	– Vice-General Chairman, Edmonton
J. D. Monteith	– Grievor

AWARD OF THE ARBITRATOR

The grievor was discharged following a collision between his train and a patrol foreman's vehicle on the Squamish Subdivision on February 6, 2011. Following that incident he and his workmate were directed to undergo drug and alcohol testing. The tests for the grievor proved positive for the consumption of cocaine. Having regard to the data provided, the Arbitrator is satisfied that the grievor had used cocaine some forty-eight hours prior to the incident, and did so in a manner that would have violated his obligation not to be under the effects of a prohibited narcotic while he was subject to duty.

While the grievor was discharged for his rules' violations in relation to the collision of February 6, 2011, following a separate disciplinary investigation the Company registered a further discharge for the grievor's violation of the Workplace Drug

& Alcohol Policy. I consider it important to stress that at the time of the grievor's discharge for his rules' violations the Company had no knowledge of his use of cocaine. In fact, it only clearly emerged at the arbitration hearing that the grievor suffered from an addiction to cocaine. That is confirmed by documented evidence presented at the arbitration confirming that since his discharge the grievor fully participated and successfully completed a six week program at the Vancouver Daytox Centre. It appears that he has attended some Narcotics Anonymous meetings and continues to have support through the Daytox program, if needed. The Arbitrator accepts the submission of the Union, made on behalf of the grievor, that he has successfully controlled his addiction since March of 2011.

It is trite to say that drug addiction is a disability protected under the **Canadian Human Rights Act**. As with any disability, it triggers an obligation of reasonable accommodation on the part of an employer and a union, to the point of undue hardship. In the Arbitrator's view the Company cannot, on the facts of the instant case, be faulted with respect to its apparent failure to have accommodated the grievor, as the extent of his cocaine use and the fact of his addiction was not in fact disclosed to it in clear terms prior to the arbitration hearing.

Nevertheless, the grievor's medical condition is a substantial mitigating factor which must be taken into account in the present case. While I am satisfied that the grievor did, as alleged by the Company, violate its drug and alcohol policy, I am not persuaded that the termination of the employee, who had some thirty-one years'

exemplary service at the time, is appropriate in all of the circumstances. This is, in my view, an appropriate case for fashioning a remedy which gives the grievor a measure of accommodation while protecting the Company's legitimate interests.

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 and without loss of seniority, subject to passing appropriate medical clearance, including any related drug and alcohol tests. For the period of two years following his reinstatement the grievor shall be subject to random, unannounced drug and alcohol testing, to be administered in a non-abusive manner. He shall abstain from the consumption of any illicit drugs and his failure to pass an alcohol or drug screening test or to undergo such a test when directed to do so shall be grounds for his dismissal. During the two year period of these conditions the grievor shall also participate on a regular basis in the activities of a support group, such as Narcotics Anonymous, with such participation to be confirmed in writing to the Company and to the Union not less than quarterly. Again, a failure to respect any of these conditions will make him liable to the revocation of his reinstatement. The period between the grievor's termination and reinstatement shall be recorded as a suspension.

October 18, 2011

(signed) MICHEL G. PICHER
ARBITRATOR