

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

CASE NO. 4054

Heard in Calgary, Tuesday, 8 November 2011

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal the termination of Employee L's employment.

JOINT STATEMENT OF ISSUE:

On June 22, 2009, the grievor's employment was terminated for "violation of your employment contract as evidenced by the results of your positive drug test on June 3, 2009 while employed as a Yard Foreman, Calgary, Alberta."

It is the Union's position that there is no just cause for Employee L's discharge and that this penalty is excessive and unwarranted in all of the circumstances. The Union contends that the Company's disciplinary action breaches the collective agreement and the *Canadian Human Rights Act*.

The Union requests that Employee L be ordered reinstated without loss of seniority and benefits. In the alternative, the Union requests that the penalty be mitigated as the arbitrator deems fit.

The Company disagrees with the Union's contentions and denies the Union's request.

FOR THE UNION:

(SGD.) D. OLSON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) M. THOMPSON
LABOUR RELATIONS OFFICER

There appeared on behalf of the Company:

M. Thompson – Labour Relations Officer, Calgary
D. Freeborn – Manager, Labour Relations, Calgary

There appeared on behalf of the Union:

M. A. Church – Counsel, Toronto
D. Olson – General Chairman, Calgary
D. Fulton – Vice-General Chairman, Calgary
M. MacDonald – Local Chairman, Calgary
Employee L – Grievor

AWARD OF THE ARBITRATOR

It is not disputed that the grievor violated an return to work arrangement which was the equivalent of a last chance opportunity. The record discloses that the grievor, who commenced employment with the Company in February of 1988 resigned his employment by a letter dated May 25, 2006. He apparently did so by reason of great difficulties in his personal life, including attempts to deal with an addiction problem over the previous months.

It appears that in 2007 the grievor's life re-stabilized and that he brought his addiction problems under control. Apparently with the assistance of the Union he successfully followed further rehabilitation programs in the fall of 2007. Following the filing of a grievance in January in 2008 by the Union challenging his resignation in May of 2006, based on the information concerning his successful rehabilitation and the Union's intercession, the Company agreed to provide him with a compassionate last chance reinstatement agreement. That agreement, dated May 7, 2008 required the grievor to remain abstinent from the consumption of alcohol or illegal drugs and to be subject to periodic, random, unannounced drug and alcohol testing. The Company expunged the grievor's resignation and reinstated him to employment without any interruption of his Company service for pension purposes.

The grievor successfully passed a number of unannounced substance tests. However, a test taken on June 3, 2009 was returned as positive for the presence of cocaine. Following the results of that test, and an ensuing disciplinary investigation in

which the grievor admitted to having used cocaine on May 24, 2009, employee L was discharged from service on June 22, 2009.

The material before me confirms that for the past five years the grievor has been involved in an arduous personal struggle to control his drug addiction. In the two and a half years since his termination he has remained abstinent and has been heavily involved in addiction support meetings through organizations such as Alcoholics Anonymous and Narcotics Anonymous as well as out-patient counselling through the Company's EFAP program, in addition to undergoing anger management therapy. The documentation tendered in evidence before the Arbitrator confirms a very high rate of attendance by Employee L in support group meetings, on a very regular basis, from 2007 through 2011.

On the basis of the material before me I accept the submission of the Union that save for the single event of relapse which caused his discharge, the grievor has worked extremely hard and has been successful in attaining and maintaining control of his addiction. Bearing in mind that his drug addiction is a disability recognized under the **Canadian Human Rights Act**, I consider it significant that he has achieved the documented success which he has, and that it is not inappropriate to fashion an opportunity for his return to work, conditioned on terms fashioned to protect the employer's legitimate interests.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without compensation for any wages and benefits lost. Employee L's reinstatement shall be conditioned on his accepting to be subject to the following conditions for a period of not less than two years from the date of his reinstatement. He shall abstain from the consumption of alcohol and drugs for that period of two years and during that time shall be subject to random unannounced drug and alcohol testing, to be administered in a non-abusive fashion. For the period of two years he shall also continue his involvement in support groups such a Alcoholics Anonymous, such activities to be confirmed to the Company and to the Union by way of a written report to be provided not less than quarterly. Should the grievor fail a drug or alcohol test, or fail to appear for a scheduled drug or alcohol test without valid excuse or should he otherwise violate the conditions of his reinstatement he shall be subject to termination without access to arbitration save for the purpose of establishing whether he did or did not violate the conditions of his reinstatement as directed in this award.

November 14, 2011

(signed) MICHEL G. PICHER
ARBITRATOR