

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

CASE NO. 4059

Heard in Calgary, Thursday, 10 November 2011

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION**

DISPUTE:

Dismissal of Employee S.

JOINT STATEMENT OF ISSUE:

On June 30, 2011, the grievor, Employee S, was dismissed from Company service for "reporting to work unfit for duty and under the influence on June 4, 2011 in violation of General Rules, Rule G. A grievance was filed.

The Union contends that that: **(1)** No definitive proof existed that the grievor was under the influence of an intoxicant on June 4, 2011. **(2)** Mitigating factors existed that should have served to reduce the discipline assessed. **(3)** The dismissal of the grievor was unfair and unwarranted in the circumstances.

The Union requests that the grievor be reinstated into Company service forthwith without loss of seniority and with full compensation for all wages and benefits lost.

The Company denies the Union's contentions and declines the Union's request.

FOR THE UNION:

(SGD.) WM. BREHL
PRESIDENT

FOR THE COMPANY:

(SGD.) M. CHERNENKOFF
ASSISTANT LABOUR RELATIONS OFFICER

There appeared on behalf of the Company:

E. Tyminksi	– Labour Relations Officer, Calgary
M. Goldsmith	– Manager, Labour Relations, Calgary
M. Chernenkoff	– Assistant Labour Relations Officer, Calgary
V. White	– Labour Relations Officer, Calgary

There appeared on behalf of the Union:

Wm. Brehl	– President, Ottawa
D. Brown	– Counsel, Calgary
A. R. Terry	– Vice-President, Lethbridge

AWARD OF THE ARBITRATOR

There can be no doubt but that the grievor, Employee S, violated Rule G on June 4, 2011. To put it simply, he was passed out drunk for the better part of his tour on duty on that day following which he was alcohol and drug tested, and returned a test positive for cocaine.

I am satisfied that Employee S engaged in binge drinking during the afternoon prior to the commencement of his tour of duty at 01:30 on June 4, 2011, having gone off duty at noon the previous day. I accept the grievor's account that he cannot recall having ingested cocaine, something which he had never done before. I also accept his account to the effect that he had been under substantial personal stress, largely by reason of the burdens occasioned by his being the father of an autistic child.

Employee S is not a long service employee, having entered Company service on March 24, 2008. The grievor's prior disciplinary record does not involve any similar infraction, although he did receive minor discipline for having been absent without permission on more than one occasion. Having reviewed the entirety of the file, the Arbitrator is inclined to agree with the representatives of the Union that notwithstanding the relatively short service of the grievor, this is a case for the compassionate fashioning

of a last chance opportunity, albeit on terms which protect the Company's legitimate interests.

The grievance is therefore allowed in part. The Arbitrator directs that the grievor be reinstated into his employment, without loss of seniority and without compensation for any wages and benefits lost subject to the following conditions:

1. The grievor shall first be medically examined by the Company and shall not be returned to work until such time as he is confirmed to be physically fit to work in a safety-sensitive environment. Such medical assessment may include an assessment for addiction problems, or any other reasonable assessment which the Company's medical officer determines is appropriate.
2. Upon being confirmed fit to return to work in a safety-sensitive position the grievor shall be subject to the following conditions for a period of not less than two years:
 - a) He shall refrain from the consumption of alcohol or illegal drugs.
 - b) He shall be subject to random, unannounced drug and alcohol testing, to be administered in a non-abusive fashion.

- c) He shall engage in such periodic contact and follow-up with the Company's EFAP program as the parties may agree is appropriate, and failing their agreement as shall be determined by the Arbitrator.
3. Should the grievor fail to honour any of the conditions of this reinstatement he shall be liable to discharge.

November 24, 2011

(signed) MICHEL G. PICHER
ARBITRATOR