

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4064**

Heard in Montreal, Tuesday, 13 December 2011

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**EX PARTE**

**DISPUTE:**

Appeal of the assessment of a discharge to Employee F of Winnipeg, Manitoba, for "Violation of CROR Rule G and the CN Policy to Prevent Workplace Alcohol and Drug Problems on January 25, 2010"

**COMPANY STATEMENT OF ISSUE**

On January 25, 2010, while the grievor worked his 15:00 Hump Traffic Coordinator assignment in Symington Yard in Winnipeg, Manitoba, he was responsible for a derailment accident involving two dangerous commodity tank cars.

As part of the post-accident investigation, the grievor submitted to alcohol and drug testing pursuant to the Company's Policy. The grievor tested positive for cocaine use on both the urine, and oral fluids tests, and the Company subsequently discharged him.

The Union disagrees with the discipline/discharge assessed to the grievor and requested that he be afforded every available means of assistance to deal with his relapse, including that he be placed on short-term disability benefits while undergoing treatment.

The Company disagrees with the Union's contentions.

**FOR THE COMPANY:**

**(SGD.) D. BRODIE**

**FOR: VICE-PRESIDENT, HUMAN RESOURCES**

There appeared on behalf of the Company:

|                    |                                       |
|--------------------|---------------------------------------|
| D. Brodie          | – Manager, Labour Relations, Edmonton |
| D. Van Cauwenbergh | – Director, Labour Relations, Toronto |
| K. Smolynech       | – Sr. Manager, OHS, Montreal          |

There appeared on behalf of the Union:

|                |                                   |
|----------------|-----------------------------------|
| D. Ellickson   | – Counsel, Toronto                |
| R. A. Hackl    | – Vice-General Chairman, Edmonton |
| B. R. Boechler | – General Chairman, Edmonton      |
| B. Willows     | – General Chairman, Edmonton      |
| J. Robbins     | – General Chairman, Sarnia        |
| Employee F     | – Grievor                         |

### **AWARD OF THE ARBITRATOR**

The background facts in relation to this grievance are related in **CROA&DR 4063**, and need not be repeated. Suffice it to say, that during the course of a disciplinary investigation following a derailment caused by the grievor's actions while he was impaired by cocaine, he revealed to the Company, apparently for the first time, that he suffers from a cocaine addiction. The Union submits that the information so provided to the Company then placed it under an obligation of reasonable accommodation for the grievor's disability. The Company's representatives counter that the serious infraction of consuming cocaine while subject to duty, and working while impaired, was of itself sufficient to justify the grievor's termination, so that the duty of accommodation did not fairly arise as it might have in different circumstances.

I have some difficulty with the Union's position. While there can be no doubt about an employer's obligation to deal with drug or alcohol addiction as a disability, and to offer reasonable accommodation for that condition, that obligation cannot be simply divorced from the facts of a serious disciplinary incident. The fact that an employee may have a disability does not shelter that person from discipline, including discharge, for a serious rule violation which would otherwise justify such a result. It does not lie in the mouth of an employee who causes a serious derailment to say: "You can't discipline

me, I was impaired.” It is nevertheless true, however, that it is incumbent on any employer to take into account all of the circumstances of an incident, including such mitigating factors as the length and quality of an employee’s service and whether a disability beyond the control of that individual may have contributed to what occurred.

I do not consider it necessary to determine conclusively whether the Company did or did not disregard an obligation to accommodate the grievor on the facts of the instant case. Having regard to all of the material before me, I am satisfied that this is, in any event, an appropriate case for a substitution of penalty by reason of mitigating circumstances. The grievor is an employee of some thirty years’ service who was never once disciplined prior to the derailment of January 25, 2010. While it was not known to the Company at the time of the incident that the grievor suffered a disability, it is not disputed that he is a recovering alcohol and cocaine addict. It would appear that he remained “clean” for some fourteen years prior to the incident here under examination. The unchallenged representation of the Union is that his relapse into the use of cocaine on that single occasion was prompted by stress associated with the breakup of his marital relation. On the whole, I am satisfied that given the length and quality of the grievor’s prior service, this is an appropriate case for an order of reinstatement, on conditions fashioned to protect 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. The grievor’s reinstatement shall be

conditioned upon his undertaking to abstain from the consumption of alcohol or illegal drugs and to be subject to random, unannounced alcohol and drug testing for a period of not less than two years. His reinstatement shall also be conditioned on his continuing involvement with support groups such as Alcoholics Anonymous, such involvement to be confirmed to the Company and to the Union by quarterly written reports for the same two year period. Should the grievor fail to honour these conditions, or should he test positive for alcohol or drugs, he will be subject to termination.

December 19, 2011

**(signed) MICHEL G. PICHER**  
ARBITRATOR