

**CANADIAN RAILWAY OFFICE OF ARBITRATION**

**& DISPUTE RESOLUTION**

**SUPPLEMENTARY AWARD TO**

**CASE NO. 4064**

Heard in Montreal, April 8, 2014

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

There appeared on behalf of the Company:

D. Brodie	– Manager, Labour Relations, Edmonton
K. Morris	– Senior Manager, Labour Relations, Edmonton
K. Smolynec	-- Senior Manager, OHS, Montreal

There appeared on behalf of the Union:

M. Church	– Counsel, Caley Wray, Toronto
R. Hackl	– General Chairman, Saskatoon
J. Robbins	– General Chairman, Sarnia
R. Caldwell	– General Chairman, Sarnia
P. Boucher	– Vice General Chairman, Belleville
F.T.	– Grievor

**SUPPLEMENTARY AWARD**

In a previous award, **CROA 4064**, the grievor, employee F, was found to have a cocaine addiction. In that award, for compassionate reasons, the Arbitrator directed the reinstatement of the grievor, subject to his undertaking to abstain from the consumption of alcohol or illegal drugs, and agreeing to be subject to random, unannounced alcohol

and drug testing for a period of not less than two years. It appears the grievor was in fact reinstated to active duty on February 8, 2012.

Subsequently, on November 8, 2012, during the course of an authorized leave, employee F was required to submit to a drug test. On November 15, 2012 the Company was advised that the grievor's hair sample was returned as positive for cocaine.

The grievor suggests that his positive test result was not by reason of his own consumption of cocaine. He maintains that when he discovered that a girlfriend living with him was in possession of crack cocaine he took possession of the cocaine and the pipe used to consume it, breaking the pipe and placing it in the garbage along with the crack cocaine. He suggests that he might then have absorbed some of the cocaine through contact with his eyes, mouth or nose.

The Arbitrator has substantial difficulty with the explanation provided by the grievor. As the beneficiary of a direction from this Office which effectively gave him a last chance to continue in his employment, provided that he remain free from contact with drugs, the grievor knew, or reasonably should have known that he could not be in any way involved with the possession or handling of crack cocaine. More fundamentally, I am not prepared to accept the plausibility of his explanation with respect to his having dealt with crack cocaine which belonged entirely to his girlfriend and that his positive test result was caused by some undetermined means of second hand consumption. Absent any expert medical or other evidence to support the grievor's theory for his

positive drug test, this Office has little basis to accord any significant credibility to his explanation.

**CROA 4064** was fashioned to give the grievor a last chance. The final sentence of that award reads : “Should the grievor fail to honor these conditions, or should he test positive for alcohol or drugs, he will be subject to termination.”

This Office has recorded a significant series of awards which confirms that Arbitrators should be reluctant to interfere with the terms and conditions of continuing employment contracts which deal, among other things, with problems of drug and alcohol abuse. (**CROA 2632, 2743, 4046, 4222**).

Employee F was given a last chance. For reasons he best understands, he failed to take advantage of it. His positive drug test for cocaine is plainly in violation of the terms of his reinstatement to employment. I can see no compelling basis on which to disagree with the Company’s determination that his employment relationship must be seen as at an end. The grievance is therefore dismissed.

April 14, 2014

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MICHEL G. PICHER  
ARBITRATOR