

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 4095

Heard in Edmonton, Thursday, 14 June 2012

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

MAINTENANCE OF WAY EMPLOYEES DIVISION

DISPUTE

Dismissal of Employee H..

JOINT STATEMENT OF ISSUE:

On March 30, 2011, the Company issued a Form 104 to the grievor that advised him that he was being dismissed from Company service for "conduct unbecoming an employee of Canadian Pacific ...". A grievance was filed.

The Union contends that: **(1)** The grievor, a thirty year Company employee, suffers from Bi-Polar Disorder; **(2)** The Company was well aware not only of the grievor's mental illness but also of the onset of abnormal and unusual behaviour in the first half of 2010. The grievor has taken steps to deal with his condition; **(3)** The Company's decision to dismiss the grievor was unfair, unwarranted and a violation of its legal duty to accommodate this long service employee who, at the material time, was clearly and obviously suffering from a disabling mental condition.

The Union requests that the grievor be reinstated into Company service 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 request.

FOR THE UNION:

(SGD) Wm. BREHL

PRESIDENT

FOR THE COMPANY:

(SGD) M. MORAN

MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

W. Scheuerman

– Labour Relations Officer, Calgary

M. Moran – Manager, Labour Relations, Calgary
Dr. O. Robinow – Consultant Psychiatrist, OHS, Victoria

There appeared on behalf of the Union:

Wm. Brehl – President, Ottawa
D. Brown – Counsel, Ottawa
Dr. O. Ahmodu – Consultant Psychiatrist, Swift Current

AWARD OF THE ARBITRATOR

The record before the Arbitrator confirms, without contradiction, that the grievor did engage in several acts of threatening and aggressive behaviour in his dealings with a number of employees as well as an OHS nurse and a Health Insurance case manager. In fact his conduct ultimately led to a restraining order being imposed upon him and his eventual conviction following a guilty plea to charges of common assault and uttering threats.

I fully accept the Union's evidence which confirms that the grievor was suffering from a condition of Bi-Polar NOS (Not Otherwise Specified) condition. That condition was confirmed by the diagnosis of two separate psychiatrists, including Dr. O. Ahmodu who testified on behalf of the Union at the arbitration hearing. His evidence confirms that the grievor has been successfully treated with appropriate medications and has returned to a stable level of behaviour that would allow him to return to work without any likelihood of conflict with other employees or supervisors. The evidence also confirms that following a number of months of oversight by Dr. Ahmodu, the grievor will then be referred back to his family doctor and maintained on the same medication that has proved successful in his treatment.

The Company had concerns which the Arbitrator considers to be extremely reasonable in the circumstances. On a number of occasions the grievor uttered physical threats to several employees and committed at least one assault in relation to one of them. The nature of his verbal threats, his imposing stature and the fact that he is a known gun collector, would, in my view, give any employer serious pause as to his continued employability. The employer's concern was to some degree bolstered by the opinion of its own psychiatrist, Dr. Oliver Robinow, a physician well experienced in behavioural issues in the employment and industrial context. The opinion which Dr. Robinow gave to the Company, in my view in the best of good faith and in keeping with professional standards, was that his review of the facts was not sufficient for him to accept a diagnosis of a Bi-Polar NOS condition for the grievor. It must be appreciated, however, that Dr. Robinow, who also testified at the hearing, was forming his best opinion solely on the basis of the documentation which was made available to him, and that he did not have the opportunity to meet with or himself diagnose the grievor.

I am satisfied that this is an appropriate case for reinstatement, albeit on conditions fashioned to protect the Company's interests. Nor can I accept the argument of the Union that the Company failed in its obligation to accommodate the grievor from the time it was told of the Union's opinion that the grievor did suffer a medical disability that should be accommodated. Given the gravity of the threats made by Employee H and the opinion it had from Dr. Robinow, which I accept was not unreasonable in the circumstances, the employer should not be held accountable for the fact that the grievor was held out of employment for the period of time it took for the full facts to be

developed and for the grievor to ultimately attain a stable mental and emotional condition.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation, and without loss of seniority. His reinstatement shall be conditioned upon his agreeing to have his treating physician, whether his psychiatrist or his family physician, confirm in writing to the Company and the Union, on a quarterly basis for not less than two years, that the grievor continues to be fit to work and is faithfully taking his prescribed medications. A failure on the grievor's part to respect the condition that he follow his physician's directions with respect to the medications which he must take will be grounds that could justify the termination of his employment.

June 15, 2012

MICHEL G. PICHER
ARBITRATOR