

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

CASE NO. 4100

Heard in Montreal, Tuesday, 10 April 2012

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Appeal of the discharge assessed to Locomotive Engineer X for his violation of his continuing employment contract dated May 7, 2007.

COMPANY'S STATEMENT OF ISSUE:

Employee X was reinstated from a prior discharge via a settlement dated October 31, 2009, (which extended the duration of his existing Continuing Employment Contract dated May 7, 2007). On March 17, 2010, the Company's OHS Department reported that Employee X was in violation of his continuing employment contract as a result of not remaining abstinent.

The Company conducted an investigation and determined that Employee X had violated his continuing employment contract, and discharged him effective March 15, 2011.

The Union contends that the discharge was excessive and unwarranted. The Union requested that the grievor be further accommodated with respect to his disability, and allowed to continue his recovery.

The Company disagrees with the Union's contentions.

FOR THE COMPANY:

(SGD.) K. MORRIS

FOR: VICE-PRESIDENT, HUMAN RESOURCES

There appeared on behalf of the Company:

D. Brodie	– Manager, Labour Relations, Edmonton
K. Morris	– Sr. Manager, Labour Relations, Edmonton
T. Brown	– General Manager, Montreal
J. Anderson	– Team Leader, OHS, Toronto

K. Smolynec – Sr. Manager, OHS, Montreal

There appeared on behalf of the Union:

M. Church	– Counsel, Toronto
B. Willows	– General Chairman, Edmonton
T. Markewich	– Vice General Chairman, Edmonton
Employee X	– Grievor

AWARD OF THE ARBITRATOR

The grievor, Employee X, is a fifty-one year old male with thirty-two years of service to the Company. The record confirms that sometime prior to August of 2005 the grievor voluntarily sought assistance from the Company's Occupational Health Services (OHS) department for his addiction problems with alcohol and illicit drugs. Pursuant to a Relapse Prevention Agreement then concluded with the OHS, Employee X became monitored for abstinence from any substance use. In August of 2005 the Company was advised that the grievor had violated his Relapse Prevention Agreement and he was then placed on a medical leave for a period of close to two years between August 8, 2005 and June 3, 2007. Upon his return to work a Continuing Employment Contract was executed between the grievor and the Company the terms of which included an undertaking by the grievor to abstain from all use of alcohol and drugs, at all times, both on duty and off duty.

It appears that January of 2008 the grievor was discharged for an accumulation of demerits. He was reinstated into employment on October 31, 2009 pursuant to a reinstatement agreement negotiated between the Company and the Union. That agreement extended the terms and conditions of his previous Continuing Employment Contract. It appears that he then continued on medical leave, subject to monitoring.

The record confirms that the grievor had a telephone conversation with an OHS nurse on March 15, 2010. When she indicated that the Company was contemplating having the grievor drug tested, as he had been unavailable and apparently unreachable for a number of days, Employee X admitted that he had used cocaine two weeks prior. When that information was communicated to the Company's operating authorities a disciplinary investigation was conducted and Employee X was dismissed for having violated his Continuing Employment Contract.

The sole issue in these proceedings is whether the grievor should be given another opportunity to demonstrate his ability to remain drug and alcohol free. The Union stresses that the grievor's addiction to cocaine is one which commonly involves episodes of relapse as part of a longer term rehabilitation effort. Citing **CROA 2716**, its counsel stresses that drug addiction is a disability recognized under the **Canadian Human Rights Act**, in respect of which the Company owes a duty of reasonable accommodation. He submits that the jurisprudence supports the view that the grievor should be given another chance, specifically citing **CROA 3126** and **3355**. Counsel also acknowledges the decision of this Office in **CROA 3415** which recognized that relapse is a common event, but also noted that: "The duty of accommodation does not require indefinite or endless tolerance on the part of the employer."

In considering the merits of this case I take it to be a positive factor that the grievor voluntarily declared himself in need of help when he first contacted the Company's Occupation Health Services. I also consider it significant that in addition to his substance abuse disorder Employee X has suffered stress and depression. Lastly, it is significant that he has apparently been successful in continuing his rehabilitation,

notwithstanding the single relapse which caused his termination. In that regard counsel submits that he has a recorded abstinence date of September 11, 2010 and that he continues to work with his treating physician as well as attending the meetings of support groups such as Alcoholics Anonymous and Narcotics Anonymous.

On the whole, I am satisfied it would not be prejudicial to the Company, nor would it constitute undue hardship, to direct, as I now do, that the grievor be reinstated forthwith, albeit subject to the same conditions of his Continuing Employment Contract, such conditions to be extended for a period of not less than two years from his reinstatement. It must also be understood that the grievor's return to active service is, in any event, predicated on the presenting of satisfactory medical evidence which would confirm his fitness to work. In all of the circumstances the grievor's return to employment with the Company shall be without loss of seniority and without compensation for any wages and benefits lost.

April 16, 2012

(signed) MICHEL G. PICHER
ARBITRATOR