

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 4111

Heard in Edmonton, Tuesday, 12 June 2012

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE

Appeal on behalf of Locomotive Engineer D. Steeg of Biggar, Saskatchewan, appealing the termination of his employment relationship with the Company for his failure to comply with the terms and conditions of his Continuing Employment Contract.

COMPANY'S STATEMENT OF ISSUE:

On August 12, 2010, the Company, Union and Mr. Steeg entered into a new Continuing Employment Contract establishing the conditions of his continuing employment with the Company. On August 17, 2010, when OHS staff contacted Mr. Steeg to initiate the agreed upon terms and conditions of the contract, Mr. Steeg advised the OHS that he was not sure that he wanted to return to work at CN, and ultimately refused to proceed with any medical assessment or drug testing.

On or about October 4, 2011, Mr. Steeg contacted the Company seeking authority to return to work. The Company advised Mr. Steeg that he had failed to comply with the terms and conditions of the contract signed August 12, 2010, and that he would not be considered for continued employment in light of the foregoing. Mr. Steeg was advised formally of such decision via a letter dated November 17, 2011.

The Union contends that the Company assessed excessive and unwarranted discipline to Mr. Steeg, that Mr. Steeg is disabled and requires accommodation, and requested that the Company rescind its letter dated November 17, 2011 and that Mr. Steeg be further accommodated with respect to his disability.

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. Crossan – Manager, Labour Relations, Prince George
- K. Morris – Sr. Manager, Labour Relations, Edmonton
- D. Brodie – Manager, Labour Relations, Edmonton
- P. Payne – Manager, Labour Relations,, Edmonton
- D. VanCauwenbergh – Director, Labour Relations, Toronto

There appeared on behalf of the Union:

- K. Stuebing – Counsel, Toronto
- B. Willows – General Chairman, Edmonton
- T. Markewich – Sr. Vice-General Chairman, Edmonton
- C. Finch-Field – General Chairman, Saskatoon
- D. Steeg – Grievor

AWARD OF THE ARBITRATOR

The grievor is a long service employee, having been hired in April of 1985. He qualified as a locomotive engineer in 1992. Because of personal issues, including a substance abuse disorder, following the closure of his employment file in 2008 the Union negotiated with the Company a Continuing Employment Contract dated January 5, 2009. He was found by the Company's Occupational Health Services (OHS) to have violated the terms of his continuing employment contract in October of 2009. He nevertheless remained out of contact with the Company until January 27, 2010 when he contacted the Assistant Superintendent of Operations in Saskatoon seeking to return to work.

After the taking of two employee statements, apparently without the involvement of the Union, the Company reinstated the grievor to his employment again, subject to a second continuing employment contract dated August 12, 2010. That agreement was

entered into with the agreement of the Union and was signed by both the grievor and the Union's General Chairperson. Subsequently, however, the grievor failed to comply with the medical assessment and drug testing requirement of the agreement when requested to do so by an Occupational Health Services nurse. According to the account of events provided by the Company, which I accept, some thirteen months later Mr. Steeg contacted the OHS department as well as his supervisor seeking to return to work. The Company then took the view that the grievor had in effect abandoned his employment and by letter dated November 17, 2011 advised him that his employment file was closed.

In the Arbitrator's view the Company has been caring and patient with the grievor, arguably to a degree that exceeds what he could expect. Nor do I accept the grievor's explanation that he declined to carry out the conditions of the medical assessment in October of 2010 because he believed that his continuing employment contract was conditioned on him first being contacted by the Company's Superintendent at Saskatoon. If the matter ended there this grievance would be dismissed.

However, there is an important issue that must be considered. It is conceded that Mr. Steeg received no communication from the Company following his effective disappearance in October of 2010, to put him on notice that his employment file would be closed if he did not communicate with his employer and comply with the requirements of his continuing employment contract of August 12, 2010, including the requirement to undergo medical assessment, as specifically required in paragraph 2 of

that agreement. As has been previously noted in the awards of this Office, before terminating a long term employee in circumstances such as those which obtain in the case at hand, it is incumbent upon the employer to provide some warning to the employee as to the consequences of his or her non-compliance with the Company's direction to return to work or comply with the provisions of a return to work contract. (See **CROA 3346.**)

While I am less than impressed with the grievor's candour and clarity of understanding as to his own obligations, I am compelled to conclude that the Company did fail to give to Mr. Steeg reasonable notice of its intention to terminate his employment relationship. In the circumstances, I am satisfied that his reinstatement is appropriate, albeit on conditions framed 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, subject his accepting the same conditions as those contained in in his Continuing Employment Contract dated August 12, 2010, such conditions to extend for a period of two years from the date of his reinstatement, which is to say his first day of return to active employment. For the purposes of clarity, the grievor is to understand that the requirement that he comply with the conditions of paragraph 2 of the continuing employment contract concerning medical assessment, including drug and alcohol tests deemed necessary by the Chief Medical Officer, is not subject to the requirement of paragraph 9 that he attend a meeting with the Superintendent prior to returning to active work. Paragraph 9 comes into play only after

he has properly complied with and satisfied the conditions outlined in paragraphs 2 and 3 of his continuing employment contract. In the circumstances, the grievor's reinstatement shall be without loss of seniority and without compensation for any wages or benefits lost.

June 15, 2012

MICHEL G. PICHER
ARBITRATOR