

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

CASE NO. 4131

Heard in Montreal, Thursday 12 July 2012

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION**

DISPUTE:

Dismissal of Mr. C. More.

JOINT STATEMENT OF ISSUE:

On November 18, 2011, the grievor was assessed with **(1)** 40 demerits for being absent from work on October 18, 19, 20, 21, 25 and 26, 2011 and **(2)** dismissal for an accumulation of demerits.

The Union contends that: **(1.)** The grievor is alcohol dependent. His absences were the result of that dependency; **(2.)** The grievor has taken steps to deal with his disability; **(3.)** The Company has failed in its duty to accommodate this disabled employee. The grievor's dismissal was excessive and unwarranted in the circumstances.

The Union requests that the grievor be reinstated into Company service forthwith without loss of seniority and under such conditions as the arbitrator deems appropriate.

The Company denies the Union's contentions and declines the Union's request.

FOR THE UNION:
(SGD.) WM. BREHL
PRESIDENT

FOR THE COMPANY:
(SGD.) M. MORAN
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Cote	– Labour Relations Officer, Calgary
M. Moran	– Manager, Labour Relations, Calgary
W. Scheuerman	– Labour Relations Officer, Calgary
M. Cherkenoff	– Labour Relations Officer, Calgary
R. Hope	– Superintendent, TR&E, Moose Jaw
T. Hatfield	– Track Renewal Supervisor,

There appeared on behalf of the Union:

Wm. Brehl	– President, Ottawa
D. W. Brown	– Counsel, Ottawa
A. R. Terry	– Vice-President, Ottawa

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the Company was aware that the grievor had an alcohol problem at the time it conducted investigations into his attendance problems.

It appears that the grievor's condition as an alcoholic was first communicated to the Company during an investigation of his third infraction for unauthorized absence. The Union then took the position that that information placed the Company under an obligation to accommodate the grievor's disability. The Company disagreed. In its brief to the Arbitrator it states, in part: "The duty to accommodate in Mr. More's case should not have to arise out of him belatedly declaring that he has a disability at the time he was being held accountable for his behaviour during his brief tenure with the Company."

This Office cannot agree. The duty of accommodation, statutorily enshrined in the **Canadian Human Rights Act**, does not depend upon the timing or method by which a disabled individual communicates their condition to their employer. It is sufficient that the employer has reasonable knowledgeable of the condition to trigger the obligation of accommodation. Nor is the duty of accommodation somehow reduced by reason of the length of an employee's tenure or service. The duty of accommodation is owed to all disabled employees, regardless of their length of service.

The material before me establishes to my satisfaction that the Company was alerted to the grievor's condition as an alcoholic at the time it made the decision to discharge him. I am compelled to agree with the Union that it therefore failed in its duty to accommodate his disability. The evidence confirms that the grievor has successfully pursued rehabilitation programs, including a twenty-one day in-patient rehabilitation program. Since that program Mr. More has remained faithful in attending AA meetings, apparently three times a week, a fact that is attested to by letters from his AA sponsor. He has achieved control of his disability.

In all of the circumstances, the grievance must be allowed. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority, with compensation for all wages and benefits lost. For the period of two years following his reinstatement the grievor shall abstain from consumption of any illicit drugs or alcohol, and shall be subject to periodic, random alcohol and drug testing, to be administered in a non-abusive fashion. He shall further provide to the Union and to the Company written confirmation of his involvement in the ongoing meetings of Alcoholics Anonymous, or any similar organization, not less than quarterly over the period of two years following his reinstatement. Any failure of these conditions shall render the grievor liable to dismissal.

July 26, 2012

(signed) MICHEL G. PICHER
ARBITRATOR