

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4132**

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. M. Paquette.

JOINT STATEMENT OF ISSUE:

On February 9, 2012, the grievor, Mr. M. Paquette, was dismissed from Company service for reporting for duty and operating a Company vehicle while under the influence of an intoxicant and being charged by the OPP for operating a road vehicle while under the influence of alcohol.

The Union contends that : **1.)** The grievor has been open and honest about his alcohol abuse; **2.)** The grievor has made serious efforts 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:

M. Cherkenoff

– Labour Relations Officer, Calgary

M. Moran	– Manager, Labour Relations, Calgary
W. Scheuerman	– Labour Relations Officer, Calgary
D. Cote	– 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, beyond controversy, that the grievor drove a Company truck while under the influence of alcohol on October 15, 2011. He was in fact arrested and taken into police custody by the White River Ontario Provincial Police and was charged with impaired driving. He was also admitted to hospital in Wawa and transferred to a hospital in Sault Ste. Marie, and therefore did not return to work. Following two disciplinary investigations, one of which was related to the grievor's absence from work, on February 9, 2012 Mr. Paquette was dismissed from Company service for "... reporting for duty and operating a Company vehicle while under the influence of an intoxicant and being charged by the Ontario Provincial Police in White River, Ontario for operating a road vehicle under the influence of alcohol."

The grievor is an employee of ten years' service who had no prior discipline. During the course of his disciplinary investigation he revealed to the Company that he has a problem with alcohol and also was being treated for depression, anxiety and suicidal thoughts. He then advised that he was taking counselling for alcohol abuse, depression and anger management and that he was then scheduled to attend a twenty-

five day in-patient program in Elliott Lake. Additionally, he provided the Company a number of documents including invoices from the Family Enrichment Centre, a letter from EFAP Agent David Krawec, a medical report from his doctor as well as three letters, two of which were from Alcoholics Anonymous sponsors confirming his involvement in the movement.

With all of the information available to it, the Company fired Mr. Paquette. It submits that his conduct involved a serious infraction, including a violation of Rule G, and that deterrence of such conduct justified its actions.

This Office cannot agree. The Company is under a statutory obligation, pursuant to the **Canadian Human Rights Act**, to accommodate disabled employees. I am satisfied that the Company knew, or reasonably should have known beyond any doubt, that Mr. Paquette suffered disabilities in relation to alcoholism, depression and anxiety for which he was being counselled and treated at the time of his disciplinary investigation. Notwithstanding that knowledge the Employer made no effort to consider an accommodation of the grievor, obviously dependent upon his proper rehabilitation and close monitoring. Rather, it simply terminated his employment.

In so doing the Company violated its obligation under the **Canadian Human Rights Act**. I am satisfied that it did so with the full knowledge of the circumstances which should have alerted its officers to the need to accommodate the grievor's circumstances.

The grievance is therefore allowed. The Arbitrator directs that the grievor be reinstated into his employment, subject to the conditions described hereafter, with compensation for all wages and benefits lost. As a condition of reinstatement the grievor must agree, for a period of not less than two years, to remain abstinent from the consumption of any illicit drugs or alcohol, and to be subject to periodic random drug and alcohol testing, to be administered in a non-abusive fashion. Additionally, the grievor shall provide to the Company and to the Union written reports, not less than quarterly, confirming his active participation Alcoholics Anonymous or any similar organization. Failure to honour these conditions will render the grievor subject to dismissal.

I retain jurisdiction in relation to the implementation of this award.

July 26, 2012

(signed) MICHEL G. PICHER

ARBITRATOR