

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4135**

Heard in Montreal, Tuesday, 11 September 2012

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

UNITED STEELWORKERS UNION – LOCAL 1976

LITIGE :

Le congédiement de M. Daniel Plante le 20 janvier 2012.

EXPOSÉ CONJOINT DU CAS :

Le 23 décembre 2011, la direction a convoqué M. Plante à une enquête concernant des allégations de non divulgation d'information médicales au service de santé de la compagnie.

Suite à cette enquête, la compagnie a congédié M. Plante.

Le syndicat a déposé un grief parce qu'il considère que l'enquête n'a pas été juste et impartiale et que la mesure disciplinaire était beaucoup trop sévère.

Le syndicat a réclamé la réintégration de M. Plante sans perte de salaire et avec tous les bénéfices.

La compagnie a refusé le grief.

POUR LE SYNDICAT :
(SGD.) J. GREFFE
VICE-PRÉSIDENT D-5

POUR LA COMPAGNIE
(SGD.) B. DEACON
POUR: LE VICE-PRÉSIDENT

There appeared on behalf of the Company:

E. Tyminski	– Labour Relations Officer, Calgary
B. Deacon	– Director, Labour Relations, Calgary
S. Abdel-Rahman	– Manager, Auto Compound, Montreal

There appeared on behalf of the Union:

N. Lapointe	– Staff Representative, Montreal
L. Julien	– Staff Representative, Montreal
M. Raiche	– Local Representative, Montreal
D. Plante	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor was less than candid in filling out an Employment Medical Report form on November 7, 2011. Specifically, he failed to reply in the affirmative to a question in relation to whether he had been in a treatment program for substance addiction. In fact he had been in such a program some twenty-five years previous. By the grievor's own explanation, he felt that that program was already within the knowledge of the Company and that in any event it was sufficiently distant in time as to not be captured by the questionnaire he was answering. It would appear that the grievor has had problems controlling his condition as an alcoholic as well as his use of marijuana. On the same form, when asked whether he used marijuana within the last year he replied no. In fact, as emerged at the hearing, he had been free of any marijuana use for a period of some nine months. Again, in the grievor's mind his answer was sufficiently accurate, given that he was no longer making use of cannabis. In fact, the grievor's answers to the questionnaire were plainly inconsistent with the report of his own physician. The Medical Information Report provided by his family physician to the Company on or about December 8, 2011 appears to confirm that the grievor was in fact consuming THC on a regular basis, although only in off duty time.

The Company takes the view that the misstatements made by the grievor in responding to the medical questionnaire represent a breach of trust which goes to the fundamental employment relationship. While the Arbitrator appreciates that perspective, I find on the whole of the evidence before me that the grievor's employability should not

be viewed as made impossible by these events. At the record indicates, the grievor is an employee of some twenty-seven years of service to the Company, albeit he has only seven years of seniority in the bargaining unit where he is currently employed, having been transferred into the bargaining unit as part of an earlier arrangement agreed to by the Company. What emerges is the picture of an employee who has had serious difficulties with alcohol and other substances who has made a more recent effort to gain control of his condition and better discharge his responsibilities. In all of the circumstances I am satisfied that the grievor should be afforded a last chance, albeit a chance made subject to strict conditions fashioned 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, without loss of seniority and without compensation for any wages or benefits lost. The grievor's return to employment shall be conditioned on his accepting to be subject to random drug and alcohol testing for a period of not less than two years, it being understood that he shall also, as a condition of his reinstatement, not consume any alcohol or illegal substances, including marijuana, for the period of these conditions. His failure to meet these conditions shall be grounds for his termination.

September 18, 2012

(signed) MICHEL G. PICHER

ARBITRATOR