

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4143**

Heard in Montreal, Tuesday 9 October 2012

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discharge of T. McLeish for violation of CROR Rule G, CN's Drug and Alcohol Policy and his Relapse Prevention Agreement.

JOINT STATEMENT OF ISSUE:

Mr. McLeish was a locomotive engineer from Capreol and has worked as an engineer since April 2008. On May 10, 2011, he was attending his second day of CROR rules classes. Prior to this class, he had been on an extended leave for illness. His last shift worked prior to the rules class was January 18, 2010.

On May 10, 2011, Mr. McLeish was called at home as he was late for rules class. After arriving at class, the instructor smelled alcohol on the grievor. He was asked to leave the class and subsequently submitted to a breath analyzer which he did not pass. He was then investigated and it was determined that he attended rules class under the influence on May 10, 2011. Mr. McLeish was then discharged for violating Rule G and CN's Drug and Alcohol Policy.

The Union submits that Mr. McLeish suffers from a disability, namely alcohol addiction, but has now recovered. The Union is seeking accommodation pursuant to the *Canadian Human Rights Act* on behalf of the grievor and submits that a suspension of time served be substituted for the termination and that he be reinstated into employment on certain conditions.

The Company disagrees. In light of the circumstances and his record, the Company submits that the discharge should be upheld.

FOR THE UNION:
(SGD.) J. R. ROBBINS
FOR: GENERAL CHAIRMAN, TCRC(LE)

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

There appeared on behalf of the Company:

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|--------------------|-------------------------------------------|
| D. Larouche | – Manager, Labour Relations, Montreal |
| M. Marshall | – Sr. Manager, Labour Relations, Toronto |
| D. Gagné | – Sr. Manager, Labour Relations, Montreal |
| D. Van Cauwenbergh | – Director, Labour Relations, Toronto |
| R. Romain | – Engine Service Officer, Eastern Canada |
| R. Baker | – Superintendent, NOZ |

There appeared on behalf of the Union:

- | | |
|---------------|----------------------------------------|
| K. Stuebing | – Counsel, Toronto |
| P. Vickers | – General Chairman, Sarnia |
| P. Boucher | – Arbitration Representative, Ottawa |
| J. R. Robbins | – General Chairman, TCRC (CTY), Sarnia |
| J. Lennie | – Vice-General Chairman, Sarnia |

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor was in fact under the influence of alcohol during his rules class on May 10, 2011. He was subsequently discharged for violating Rule G and the Company's Drug and Alcohol Policy.

The issue is whether this is an appropriate case for a substitution of penalty. The material before me confirms that the grievor is an alcoholic. His record reveals that in January of 2010 he sought a leave of absence to enter a treatment for substance dependence. In October of 2010, at his own cost, he undertook treatment for his alcohol dependence at a facility in Elliot Lake. Thereafter he returned to work under the terms of a Relapse Prevention Agreement.

It is not disputed that Locomotive Engineer McLeish had a relapse in early May of 2011, which resulted in his attending the rules class while under the influence of alcohol.

There are mitigating factors to be considered in the instant case. Firstly, it must be borne in mind that alcoholism is an illness which merits efforts at accommodation to the point of undue hardship. While I do not dispute the value of the Company's previous understanding of the grievor's condition as reflected in its willingness to enter the Relapse Prevention Agreement, it is incumbent on a board of arbitration to consider the entire picture in a case such as this. The material before me confirms that following his discharge the grievor engaged in a course of action which has led to a period of close to a year and a half of sobriety on his part. On his behalf the Union has tendered in evidence a number of reports and documents giving substance to the fact that the grievor has successfully completed treatment programs and that he has been a faithful participant in the activities of Alcoholics Anonymous. On the whole, I am satisfied that this is an appropriate case for reinstatement on conditions fashioned to protect the Company's legitimate interests.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without compensation for his wages and benefits lost. As a condition of reinstatement the grievor must agree to abstain from the consumption of alcohol and to be subject to random alcohol and drug testing, to be administered in a non-abusive fashion, for a period of not less than two years from the time of his reinstatement. As a further condition of his reinstatement, the grievor is to provide to the Company and to the Union written confirmation of his ongoing attendance in the activities of Alcoholics Anonymous,

or any similar organization, for the same period of two years, on a quarterly basis. Any failure on the part of the grievor to honour these conditions shall be grounds for his termination, with access to arbitration only for the purpose of determining whether or not a condition was in fact violated.

October 15, 2012

(signed) MICHEL G. PICHER

ARBITRATOR