

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 4152

Heard in Calgary, Tuesday, 13 November 2012

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Appeal the assessment of a discharge to Locomotive Engineer A. Hartley for violation of CN's Policy to Prevent Workplace Alcohol and Drug Problem on December 30, 2011.

UNION'S STATEMENT OF ISSUE:

On December 30, 2011, Mr. Hartley was in the rest facility in Edmonton, AB, when a hotel employee claimed that they could smell the odour of marijuana emanating from Mr. Hartley's room. CN and the EPS constables attended the scene and Mr. Hartley produced a partial marijuana cigarette. The EPS departed, taking no further action. The Company then removed Mr. Hartley from service. Subsequent to an investigation Mr. Hartley was served with both a suspension and a discharge.

The Union contends that the Company did not take into account the mitigating circumstances surrounding the incident, that the Rule G Bypass provisions were not offered, that Mr. Hartley was not subject to duty at the time and that the discipline is excessive.

The Union also contends that Mr. Hartley is entitled to lost wages in accordance with article 75 for the period of time held out of service.

The Union requested that the Company reconsider the discipline assessed and expunge the discipline or, in the alternative, reduce the discipline and compensate Mr. Hartley for all loss of wages and benefits.

The Company disagrees with the Union.

COMPANY'S STATEMENT OF ISSUE:

Mr. Hartley was found to be in possession of, and using, marijuana in his Company provided hotel accommodations at his away-from-home terminal of Edmonton on December 30, 2011. Subsequent drug testing confirmed his recent marijuana use and impairment.

The Company conducted an investigation and determined that Mr. Hartley had violated the Company's Policy to Prevent Workplace Alcohol and Drug Problems, and discharged him effective February 24, 2012.

The Union contends that the discharge was extremely excessive under the circumstances and requested that the discipline be significantly reduced and that the grievor be reinstated, made whole for all lost wages and benefits. The Union also contends that the Rule G Bypass provisions were not offered and that Mr. Hartley is entitled to lost wages in accordance with Article 75 for the time he was held out of service.

The Company disagrees with the Union's contentions.

FOR THE UNION:

FOR THE COMPANY:

(SGD.) T. MARKEWICH

K. MORRIS

FOR: GENERAL CHAIRMAN

FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

K. Morris	– Sr. Manager, Labour Relations, Edmonton
J. Boychuk	– General Manager, WR-Alberta, Edmonton
R. Bateman	– Director, Labour Relations, Toronto
D. Brodie	– Manager, Labour Relations, Edmonton
P. Payne	– Manager, Labour Relations, Edmonton
D. Crossan	– Manager, Labour Relations, Prince George

There appeared on behalf of the Union:

M. S. Church	– Counsel, Toronto
R. Ermet	– Vice-General Chairman, TCRC-LE, Edmonton
A. Hartley	– Grievor

AWARD OF THE ARBITRATOR

It is not disputed that the grievor violated the Company's Policy to Prevent Workplace Alcohol and Drug Problems. He was found in possession of a small quantity of marijuana in his Company provided hotel room at his away-from-home terminal of Edmonton on December 30, 2011. It appears that he was apprehended by reason of the smell of marijuana smoke detectable in the hallway adjacent to his room. Although he was attended by both CN and Edmonton police constables, who seized the small quantity of marijuana in his possession, apparently a partial marijuana cigarette, no charges were pursued. However, the grievor was immediately withdrawn from service and, following a disciplinary investigation, was discharged.

The Company's representatives acknowledge that this case does not involve a violation of Rule G, as the grievor cannot be confirmed to have possessed or used marijuana while on duty or subject to duty. There can be no doubt, however, that while the grievor did not possess or use marijuana while on duty, he clearly did both possess and use that prohibited substance on what was effectively Company premises, in the form of the Company provided hotel accommodation at his away-from-home terminal. While I am compelled to agree with the Company that what occurred was not a violation of Rule G, so that the Rule G Bypass agreement can have no application, it is not without consequence to appreciate that in accordance with that rule the grievor might have suffered a lesser consequence if he had in fact been detected as reporting for work under the influence of alcohol or a drug, at least on a first infraction.

In my view there are mitigating factors which suggest that an outcome short of discharge is not inappropriate in this case. Mr. Hartley has twenty-eight years of service with the Company, having been hired in March of 1984. At the time of this incident his disciplinary record was clear. Additionally, his use of marijuana was entirely in an off duty setting, albeit it was in a Company subsidized hotel room. There is no suggestion in the material before me that the grievor is an habitual drug user or suffers from any form of addiction or dependence. The record further confirms that he did attend meetings of Narcotics Anonymous following his termination and has, it appears, abstained from the use of marijuana ever since.

In the circumstances, I am satisfied that a reinstatement, subject to conditions fashioned to protect the legitimate interests of the Company, is not inappropriate. 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 reinstatement shall be conditioned on his accepting to refrain from the consumption of prohibited drugs and be subject to random alcohol and drug testing for a period of not less than two years, such testing to be conducted in a non-abusive fashion. Should any such test prove positive, or should the grievor fail or refuse to attend at any such test when properly directed to do so, he shall be subject to immediate termination.

November 19, 2012

SIGNED
MICHEL G. PICHER
ARBITRATOR