

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 4160

Heard in Calgary, Thursday, 15 November 2012

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

MAINTENANCE OF WAY DIVISION

DISPUTE:

Dismissal of Mr. R. Watkins.

JOINT STATEMENT OF ISSUE:

By way of form 104 dated November 9, 2011, the grievor was dismissed from Company service for "knowingly operating a company vehicle on a public roadway while your driver's licence was under suspension." A grievance was filed.

The Union contends that: **(1)** At the time of his dismissal the grievor had more than fourteen years of Company service with a near perfect discipline record; **(2)** The grievor openly acknowledged his error in judgement and was cooperative throughout the investigation; **(3)** Mitigating factors existed that should have reduced the discipline assessed; **(4)** The discipline assessed was unfair 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 disagrees with the Union's contentions and denies the Union's request.

FOR THE UNION:

FOR THE COMPANY

(SGD) WM. BREHL
PRESIDENT

(SGD). M. MORAN
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

W. Scheuerman – Labour Relations Officer, Calgary
M. Moran – Manager, Labour Relations, Calgary
M. Chernenkoff – Labour Relations Officer, Calgary
D. Cote – Labour Relations Officer, Calgary

There appeared on behalf of the Union:

Wm. Brehl – President, Ottawa
D. Brown – Counsel, Ottawa

A. R. Terry – Vice-President, Ottawa
H. Helfenbein – Director, Medicine Hat
J. Brehl – Local Chairman, Chase

AWARD OF THE ARBITRATOR

The record before the Arbitrator confirms that the grievor operated a Company vehicle while his driver's licence was under suspension. It appears that Mr. Watkins, whose regular assignment involved the operation of a BTMF truck, lost his driver's licence for an off duty traffic violation on August 14, 2011. Notwithstanding the loss of his licence, he failed to advise the Company of his status and continued to operate a Company vehicle until he was ultimately discovered on October 11, 2011.

The record confirms that on that occasion his BTMF truck became stuck in a ditch. When CP Police Constable J. Archdekin overheard a radio communication in relation to the status of the grievor's vehicle he attended at the scene, as did Constable Brunner of the RCMP. When he was asked for his driver's licence the grievor responded that he left it in his hotel in Golden. Supervisor D. Bratt, who arrived shortly thereafter, undertook to drive the grievor back to his hotel to obtain the driver's licence. However, Constable Archdekin, having done a CPIC check on the grievor's licence, soon advised that in fact it was suspended. The grievor was then arrested and Constable Brunner was requested to administer a roadside breathalyzer test. That test registered a "fail" which would indicate the possibility of a blood alcohol level over 0.08. However, as the nearest RCMP detachment did not then have available technicians to perform a full breathalyzer test, no further efforts in that regard were pursued. The grievor was, however, issued with an additional ninety day "immediate roadside prohibition". He was later removed from service pending investigation. Following that

investigation Mr. Watkins was dismissed for operating a Company vehicle on a public roadway while his driver's licence was under suspension.

The Company's submission is that all of the circumstances justify the Company's conclusion that the grievor has violated the bond of trust essential to the employment relationship. That, it maintains, is based not only on the fact that the grievor suppressed information with respect to the status of his driver's licence, but that he also attempted to mislead the police officers as to the whereabouts of his licence and the length of the suspension when in fact he was confronted with the truth. It appears that he attempted to indicate that he had a thirty day suspension when, at all material times, his licence was suspended for ninety days effective August 14, 2011.

The Union draws to the Arbitrator's attention a number of prior awards in which driving without a proper licence has resulted in discipline short of outright discharge. (**CROA 2600** and **SHP 618**) Additionally, the Union's representatives suggest that the grievor's actions in the instant case are not so culpable as those found in other cases where discharge was sustained, as for example in **CROA 2087**. They submit that by discharging the grievor outright for this single infraction, the Company effectively departed from normal principles of progressive discipline. In further support of that proposition, they note that the grievor's disciplinary record was clear at the time of the incident and that he has relatively little prior discipline on his record.

It is axiomatic that each case must be determined on its own facts. Regrettably, I am not persuaded by the arguments of the Union in the instant case. Firstly, the grievor's conduct in respect of driving a Company vehicle without a proper licence was not an isolated event. As is undisputed, he operated a Company BTMF for close to two months in the full knowledge of the fact that his licence was suspended. In my view, an aggravating factor is that he misled the investigating officers and a Company supervisor at the scene, both with respect to having a valid licence back at his hotel room, which he did not, and thereafter as to the length of the suspension which he was under when confronted with the fact that his licence was suspended. Additionally, while it is true that he was not disciplined for operating his vehicle under the influence of alcohol, the fact remains that his roadside breathalyzer test result cannot be characterized as other than an aggravating factor. Nor can the grievor claim particularly long service, having been hired in June of 1997.

When all of these factors are closely considered, I find it difficult to reject the Company's submission that the grievor's conduct, spread over a substantial period of time, compounded by falsehoods which he resorted to when he was finally discovered, did strike a fatal blow to the bond of trust essential to the employment relationship. Regrettably, I can find no basis on the material before me to direct a reduction of penalty.

For these reasons the grievance must be dismissed.

November 19, 2012

signed
MICHEL G. PICHER
ARBITRATOR