

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION  
CASE NO. 4162**

Heard in Montreal, 11 December 2012

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE  
MAINTENANCE OF WAY EMPLOYEES DIVISION**

**DISPUTE:**

Dispute concerning J. Spriggs.

**JOINT STATEMENT OF ISSUE:**

On Friday, September 23, 2011, the grievor, Mr. Spriggs was demoted from his Group I Machine Operator position to an Extra Gang Labourer's position. The Company's reason for demoting the grievor was that, in its opinion was not fit to perform safety sensitive work. A grievance was filed.

The Union contends that: **1.)** The Company has not provided the Union with any medical evidence that states that the grievor was unfit for safety sensitive work when he was demoted in September 2011; **2.)** The Company's actions since the demotion have been inconsistent and even contradictory; **3.)** The grievor was not provided with a fair and impartial investigation in violation of section 15.1 of the collective agreement. The grievor's demotion was unfair and unwarranted.

The Union requests that the grievor be returned to his former safety sensitive position immediately with full compensation for all wages and benefits lost. If the grievor's former position is no longer available then the Union requests that he be allowed to exercise his seniority to its full extent.

The Company denies the Union's contentions and declines the Union's request.

**FOR THE UNION:  
(SGD.) Wm. BREHL  
PRESIDENT**

**FOR THE COMPANY:  
(SGD.) D. COTE  
FOR: MANAGER, LABOUR RELATIONS**

There appeared on behalf of the Company:

D. Cote	– Labour Relations Officer, Calgary
M. Moran	– Manager, Labour Relations,
Dr. G. Lambors	– Chief Medical Officer, OHS Calgary
Dr. J. Bobrowski	– Addiction Medicine Physician
L. Trueman	– Director of OHS

There appeared on behalf of the Union:

William Brehl	– President, Ottawa
David Brown	– Counsel, Ottawa
Dr. J. C. Negrete	– Witness
Bill Wakefield	– Witness
A. Della Poeta	– Director at Inzta Regina
P. Gauthier	– Local Representative
J. Spriggs	– Grievor

### **AWARD OF THE ARBITRATOR**

In the Arbitrator's view the Company was correct in its judgement that the grievor should be restricted from performing safety sensitive work. In August of 2011 Mr. Spriggs' family physician wrote a letter concerning the grievor's condition. That letter called into question the reliability of alcohol and drug testing being performed on the grievor and made reference to heresy information that he in fact was making use of recreational drugs. I am satisfied that the Company was justified in giving effect to that information, by taking the decision it did to restrict him from performing safety sensitive work. I consider the Company's original position to be amply justified in the report prepared by Dr. Jake Bobrowski, dated November 16, 2011.

Significantly, however, more recent information appears to confirm that the grievor has been medically judged fit to return to his assignment in safety sensitive work. That is clearly the conclusion of an extensive medical report in respect of the grievor prepared by Dr. Juan C. Negrete, an acknowledged expert in psychiatry and

additions. In the circumstances I am satisfied that it is appropriate for the grievor to return to work without any restriction from performing safety sensitive duties, provided that he returns on such conditions as may be acceptable to the Company, by agreement with the Union. Failing the ability of the parties to agree on the appropriate conditions, the matter may be returned to the Arbitrator for completion. This is not, however, an appropriate case for compensation.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without restriction from performing safety sensitive work, subject to such conditions as may be agreed by the parties or, failing agreement, to be determined by the Arbitrator.

December 17, 2012

**(signed) MICHEL G. PICHER**  
ARBITRATOR