

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION  
CASE NO. 4163**

Heard in Montreal, Tuesday 11 December 2012

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the closure of Conductor Charette's employment file and the resulting termination of this employment relationship with CP Rail.

**JOINT STATEMENT OF ISSUE:**

From 2005 until 2009, Mr. Charette was unable to report to duty by reason of incarceration. In April 2007, Mr. Charette received an Authorized Leave of Absence letter from the Company. On November 29, 2007, the Company closed Mr. Charette's employment file.

The Union contends that the closure of Mr. Charette's employee file was unwarranted in the circumstances. The Company did not conduct an Investigation, issue a Form 104 or provide advance warning that it would close his employment file. The Union contends that the Company's conduct in the course of closing Conductor Charette's employment file is unsupported by the Collective agreement.

The Union seeks an order reinstating Mr. Charette without loss of seniority and benefits, and that he be made whole for all lost earnings with interest. In the alternative, the Union requests that Mr. Charette be reinstated on such terms as the Arbitrator sees fit.

The Company disagrees with the Union's contentions and denies the Union's request.

**FOR THE UNION:  
(SGD.) W. APSEY  
VICE GENERAL CHAIRMAN**

**FOR THE COMPANY:  
(SGD.) D. BURKE  
LABOUR RELATIONS OFFICER**

There appeared on behalf of the Company:

|             |                                      |
|-------------|--------------------------------------|
| D. Burke    | – Labour Relations Officer, Calgary  |
| M. Thompson | – Manager Labour Relations, Calgary  |
| A. Pompizzi | – Assistant Superintendent, Montreal |

R. McLellan – Superintendent for Quebec, Montreal  
D. Cote – Labor Relations Officer, Calgary

There appeared on behalf of the Union:

D. Ellickson – Counsel  
B. Hiller – General Chairman, Bowmanville  
W. Apsey – Vice General Chairman, Smith Falls  
R. Peloquin – Vice General Chairman, Montreal  
B. Brunet – General Chairman, (LE), Montreal  
D.Charette – Grievor, Montreal

### **AWARD OF THE ARBITRATOR**

The record confirms that the grievor was involved in an attempted armed robbery and a vehicle pursuit which resulted in the accidental death of a young girl. The grievor subsequently pled guilty to a number of criminal charges, including causing death by criminal negligence and having possession of property obtained by crime. He was sentenced to seventy four months in penitentiary, being released in June 2009.

Significantly, at the time of the grievor's initial arrest, and indeed for a substantial period of time during his incarceration, the Company remained unaware of the reasons for his absence from work. Through his Union he initially obtained a six month leave of absence which was thereafter extended for a further six months. That leave was yet further extended by a letter dated April 12, 2007 signed by Company manager Rick McClellan. At the time of signing that letter Mr. McLellan did not have a full appreciation of the grievor's circumstances. Based on information provided by the grievor's girlfriend, Mr. McLellan was led to believe that Mr. Charette was in the process of defending himself against an improper criminal charge. He therefore provided a brief letter stating, in the Arbitrator's translation:

To whom it may concern

This letter is to confirm that Mr. Denis Charette, pin number [...], is presently on an unpaid leave of absence. Upon his return he will resume service as an employee of the Canadian Pacific Railway.

When the Company finally learned of the grievor's actual circumstances, in the late spring of 2007, at the expiry of a six month leave which would have been deemed granted in April of 2007, yard manager Al Pompizzi attempted to convey a letter to the grievor at his last known address, convening him to a meeting scheduled November 28, 2007. When the grievor failed to appear on that date, a further letter was sent to him indicating that his employment file was closed. It does not appear disputed that the Union was made verbally aware of that fact.

The Union submits that having paid his debt to society, and having overcome certain problems with drugs and alcohol which contributed to his criminal activities and incarceration, the grievor should now be reinstated to his employment. Counsel for the union relies on a number of precedents of this office, including CROA **1643**, and **3346**, as well as **SHP 4777**.

In **CROA 1645** the following appears:

As is implicit from the cases, there can be no automatic presumption that conviction for a serious criminal offense, including subsequent incarceration, is necessarily inimical to the continuation of an employment relationship. In this, as in any matter of discipline each case must be assessed on its own merits, with close regard to a number of factors, including the nature and circumstances of the offense, efforts at rehabilitation, the nature of the work preforms by the employee, the length of an employee's service and the quality of his or her disciplinary record and prior criminal record, if any. Obviously, careful consideration must be given to the reinstatement of any employee who is absent without leave due to incarceration for a serious criminal offense, having particular

regard to the need of the Company to provide, and appear to provide a public service consistent with the highest standards of safety and integrity in its employees. Those considerations should not be compromised or placed at risk. On the other hand, great care should be taken not to overreact and unduly sever the career of an employee of long-standing and good service when the evidence establishes, on the balance of probabilities, that there is no real jeopardy to the Company's legitimate interests.

I consider this a highly unfortunate case. The grievor appears to have been a relatively positive employee, with 14 years of service to the Company. However, he also became involved in an armed robbery and criminal negligence causing death, as a result of which he was effectively removed from Company service for a period of 6 years. What is perhaps most unique about the instant case is that the Company remained unaware of his circumstances or whereabouts between early 2005 and late November of 2007.

On what basis should this office reinstate the grievor into his employment ? As is evident, he was unable to render his obligations to the company for a period of some 6 years, during which he was incarcerated for an extremely serious criminal offence. More significant, in my view, is the fact that the grievor effectively withheld from the Company the fact of his incarceration, leaving Mr. McLellan under the false impression that he needed a leave of absence to combat charges which were unfairly made against him, when in fact he had already been convicted and was serving his time in a penitentiary. Very simply, for reasons he best appreciates, Mr. Charette engaged in a course calculated to keep the truth from his employer and remained effectively unavailable to perform any work, for reasons unexplained for a period that would have extended to 6

years, if his supervisors had not in fact learned of his circumstances and effectively closed his employment file.

As the facts disclose, not only did the grievor commit the crime for which he was incarcerated, he also engaged in a course of conduct and communication calculated, on the one hand, to keep his employer unaware of his circumstances and, on the other hand, to maintain his employment status and his eventual ability to return to work. That is evident from the effort to extract the letter provided by Mr. McLellan, without any true understanding on his part as to what the grievor's real circumstances were.

In the Arbitrator's view this is not a compelling case for a compassionate reinstatement of the grievor. If anything, his conduct while incarcerated, and his total lack of candor in his relations with his employer, were such as to sever the bond of trust essential to the employment relationship. For these reasons the grievance must be dismissed.

December 17, 2012

**(signed) MICHEL G. PICHER**

ARBITRATOR