

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4200**

Heard in Montreal, April 11, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

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

DISPUTE:

Dismissal of Mr. B.

JOINT STATEMENT OF ISSUE:

On June 11, 2012 the grievor, Mr. B, was dismissed from Company service for reporting for duty on April 27, 2012 under the influence of alcohol. A grievance was filed. The grievor has a dependency issue which was known to the Company prior to dismissal. The Company failed to accommodate this disabled employee. The dismissal of the grievor was unfair, unwarranted and improper in the circumstances. The grievor be reinstated into Company service forthwith without loss of seniority and with full compensation for all financial losses incurred. The Company denies the Union's contentions and declines the Union's request.

FOR THE UNION:
(SGD.) W. Brehl
President

FOR THE COMPANY:
(SGD.) M. Moran
Manager Labour Relations

There appeared on behalf of the Company:

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| D. Cote | – Labour Relations Officer, Calgary |
| W. Scheuerman | – Labour Relations Officer, Calgary |

There appeared on behalf of the Union:

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| W. Brehl | – President, Ottawa |
| D. Brown | – Counsel, Ottawa |

AWARD OF THE ARBITRATOR

There can be no doubt but that the grievor violated rule G, as charged. He clearly reported for work under the influence of alcohol at Whitemouth, Manitoba on the morning of April 27, 2012. Following observations of the grievor, he was required to undergo a breathalyzer and urine test which returned results of positive for breath alcohol and positive for the urine drug test. Following a formal investigation the grievor was terminated on June 11, 2012.

The Union alleges that the Company failed to properly accommodate the grievor's condition as an alcoholic. It appears that following his removal from service Mr. B entered a residential rehabilitation program at Winnipeg. According to the Union's representations, he left that program without successfully completing it, prompted in part by the fact that the Company had terminated his services.

In the Arbitrator's view it would be somewhat unfair to fault the Company with indifference towards the grievor's condition. It does not appear disputed that even following his termination the Company entertained the possibility of the grievor being accommodated, subject to his successful treatment. However, and by reason of the apparent failure of successful treatment, there has been no conclusive outcome to those efforts. It appears that at the present time the grievor is still struggling with his condition.

In the Arbitrator's view this is an appropriate case to fashion a remedy, albeit one which adequately protects the interests of the Company, as well as those of the grievor. I do not consider this to be an appropriate case for an order of compensation. It is, however,

appropriate to fashion an award which will establish the conditions for the possible rehabilitation of the grievor and his return to productive work.

The grievance is therefore allowed in part. The Arbitrator directs that the grievor be reinstated into his employment as soon as he has complied with the following conditions: he shall agree to undertake a one month residential rehabilitation program, similar to the one in which he was previously enrolled and he shall return to work only after it has been documented that he has successfully completed that program and has gained control of his condition. Thereafter, his ongoing employment shall be conditioned on the grievor maintaining involvement in Alcoholics Anonymous or a similar support group, such activity to be confirmed by written quarterly reports to the Company and the Union for a period not less than two years. The grievor's reinstatement shall also be conditioned upon his accepting to remain free of the consumption of alcohol or illicit drugs, it being understood that a violation of those conditions shall render the grievor liable to termination.

The matter is therefore referred back to the parties for resolution on the terms described above. Should there be any difficulty with respect to the execution of these terms the matter may be spoken to. Should the grievor return to work in accordance with the conditions herein described he shall do so without loss of seniority. The financing of any residential rehabilitation program shall be in accordance with the normal rules and procedures of the EFAP.

April 15, 2013

MICHEL G. PICHER
ARBITRATOR