

CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4222

Heard in Montreal, July 10, 2013

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal on behalf of Locomotive Engineer Dean Steeg of Biggar, Saskatchewan, appealing his discharge for his failure to comply with the terms and conditions of his Continuing Employment Contract, and the Arbitrator's extension of these terms in his award to CROA Case No. 4111 dated June 15, 2012, by virtue of his positive test result for cocaine on July 26, 2012.

THE COMPANY'S EXPARTE STATEMENT OF ISSUE:

On June 15, 2012, the Arbitrator issued his award to CROA Case No. 4111, reinstating Mr. Steeg to employment with the Company. His reinstatement was subject to his accepting the same conditions as those contained in his Continuing Employment Contract dated August 12, 2010, with such conditions to extend for a period of two years from the date of his reinstatement.

On July 26, 2012, Mr. Steeg submitted to drug testing as a part of a medical assessment. On August 2, 2012, Mr. Steeg's hair sample was reported as being positive for cocaine. The Company conducted an investigation and determined that Mr. Steeg had violated his Continuing Employment Contract conditions, as extended by the Arbitrator in his award to CROA 4111, and discharged him.

The Union contends that the Company assessed excessive and unwarranted discipline to Mr. Steeg, that Mr. Steeg is disabled and requires accommodation. The Union's grievance requested that the grievor be further accommodated with respect to his disability, and returned to work as a Locomotive Engineer, and that he be made whole for all lost wages and benefits. The Company disagrees with the Union's contentions.

FOR THE UNION:
(SGD.)

FOR THE COMPANY:
(SGD.) D. Brodie for K. Madigan
VP Human Resources

There appeared on behalf of the Company:

D. Brodie
K. Morris
K. Smolyne

– Manager, Labour Relations, Edmonton
– Senior Labour Relations Manager, Edmonton
– Senior Manager Occupational Health and Safety, Montreal

There appeared on behalf of the Union:

- | | |
|---------------|-------------------------------------------|
| K. Stuebing | – Counsel, Toronto |
| B. Willows | – General Chairman, Edmonton |
| B. Ermet | – Vice General Chairman, Edmonton |
| P. Boucher | – TCRC Coordinator Arbitrator, Belleville |
| D. Psichogios | – CP Local Chairman, Montreal |
| D. Steeg | – Grievor, Biggar |

AWARD OF THE ARBITRATOR

The grievor in the instant case was previously reinstated into his employment by this office through CROA 4111. That award stipulated that his reinstatement was subject to his accepting, for a period of two years, to abide by the conditions of a continuing employment contract. Those conditions included a prohibition against the consumption of drugs and periodic drug and alcohol testing.

It appears that as part of the grievor's return to work following the above award, he was scheduled for medical clearance, part of which included hair sample drug testing. Although he initially refused to submit to the test, he eventually did and his hair sample was ultimately confirmed as being positive for cocaine. During the ensuing investigation the grievor expressed the view that there must have been a positive reading by reason of chemical reaction resulting from a renal biopsy which he had recently undergone. The Company did not accept that explanation, upon information obtained from its own Occupational Health Services Department, and it discharged the grievor effective August 27, 2012.

It is clear that the conditions under which the grievor was reinstated into employment by this office included the requirement that he undergo drug testing and

that he remain at all times free from the consumption of illegal drugs. Unfortunately, I am satisfied that Mr. Steeg failed to honour the conditions under which he was being reinstated, resulting in the positive drug test which registered during the reinstatement medical process in July of 2012. At a minimum, that positive test is clearly inconsistent with the grievor's own account that he had not consumed cocaine since December of 2011.

In the result, I am compelled to conclude that Mr. Steeg failed to abide by the conditions established by this Office in relation to his reinstatement into employment. In the result, I am compelled to the unfortunate conclusion that the grievor has failed to honour the conditions of his reinstatement, and that there is no compelling basis for any adjustment in the penalty ultimately assessed by the Company.

For the foregoing reasons the grievance must be dismissed.

July 12, 2013

MICHEL G. PICHER
ARBITRATOR