

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4289**

Heard in Montreal, February 12, 2014

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

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

DISPUTE:

Dismissal of Mr. John Dacosta.

UNION'S EXPARTE STATEMENT OF ISSUE:

By way of Form 104 dated January 4, 2012, the grievor, Mr. John Dacosta, was dismissed from company service for conduct unbecoming a CP employee as evidenced by his being charged for the possession of drugs for the purposes of trafficking. A grievance was filed.

The Union contends that: The grievor is a long service employee with an entry date of July 16, 1984. Throughout his career, the grievor never once received discipline for a drug or alcohol related offense; The grievor was not found guilty of drug trafficking.

Other mitigating factors, including an admitted drug dependency, existed that should have served to reduce the discipline assessed. The Company has failed its duty to accommodate this disabled worker. The assessment of dismissal was too severe and unwarranted in the circumstances.

The Union requests that the grievor be reinstated into Company service immediately without loss of seniority and under such conditions as the Arbitrator deems appropriate in the circumstances.

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

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

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

B. Sly – Director Labour Relations, Calgary

There appeared on behalf of the Union:

J. Brehl – Local Chairperson, Chase

D. Brown – Counsel, Ottawa

AWARD OF THE ARBITRATOR

The record before the Arbitrator confirms that on December 15, 2011 police executed search warrants at a number of locations, including the grievor's residence. As a result, police seized some seven pounds of marijuana, fifty-seven grams of cocaine, ninety-three codeine pills as well as a quantity of psilocybin (magic mushrooms). The street value of the drugs is estimated at approximately seventy thousand dollars. The record confirms that although he was subsequently charged with possession of cocaine and marijuana for the purposes of trafficking, as well as the possession of property obtained by crime, the charges against Mr. Dacosta were eventually reduced to the possession of the prohibited drugs, apparently in exchange for a guilty plea for which the grievor was sentenced to a twelve month conditional discharge, six months' probation, an order that he must supply DNA sample and that he be subject to a ten year weapons prohibition.

The Company did not await the grievor's conviction to act. On December 21, 2011, shortly after the December 6, 2011 news reports of the grievor's arrest and the charges against him, the Company conducted its disciplinary investigation. Shortly thereafter, on January 4, 2012 the grievor was dismissed for conduct unbecoming a CP employee.

The Union stresses that the grievor is a long service employee with a previously positive disciplinary record over some twenty-seven years of service. It also notes that during the course of the Company's investigation the grievor indicated that he had a drug problem and was seeking assistance, and that since his termination he has followed outpatient programs to assist himself in that regard. In part, therefore, the Union submits that the Company has failed in its obligation to accommodate the grievor's drug disability.

The Arbitrator has some difficulty with the position which the Union advances, having regard to the narrow facts of this case. It is true that drug addiction, like alcoholism, does trigger an employer's obligation of accommodation, as a general matter. The instant grievance, however, involves much more. Mr. Dacosta does not present before this Office as an employee who was found in possession of illegal drugs used for his own purpose and related to his own condition. The quantities of narcotics and prohibited drugs found in his possession are substantial and, in my view, can only be seen as raising the inference that they were intended to be trafficked, presumably at a significant profit to the grievor.

The decisions of this Office reveal what can fairly be characterized as an open and compassionate approach to the cases of employees who may have a drug problem, and/or are found in possession of small quantities of drugs intended for their personal use. As recorded in the jurisprudence of this Office, however, different considerations come to bear when an employer is faced with evidence that an

employee is so substantially involved in the drug culture as to be an active participant in either the production or sale of illicit drugs. That is reflected, in part, in the following passage from the award of this Office in **CROA&DR 1703** :

Apart from the more serious criminal ramifications impacting on an employee's reputation, that approach reflects a natural concern about a person whose involvement with drugs extends to producing or selling it for profit.

It is not unnatural to harbour concerns that the profit motive may cause the individual's trafficking activities to spread into the workplace.

The Arbitrator is not without sympathy for the submission of the Union, which stresses the grievor's lengthy service to the Company and his relatively positive disciplinary record over the years. Notwithstanding those elements, I am compelled to the unfortunate conclusion that in the instant case the grievor crossed a line by moving beyond the mere possession or use of drugs into what I am satisfied was substantial involvement in drug trafficking. For the reasons touched upon in prior awards of this Office, such activity has a negative quality which goes beyond the mere possession or use of drugs on a personal basis and which does pose a more substantial and serious concern for the employer's legitimate business interests.

In the case at hand, the grievor clearly involved himself, and appears to have been in charge of, a significant drug trafficking operation. I am satisfied that is so regardless of the good fortune he was able to bargain with the Crown in relation to a reduction of the charges against him to possession. The elements which may drive a plea bargain do not necessarily come to bear in the assessment of appropriate discipline in the industrial employment setting. In the instant case the Company takes a

position that the grievor's criminal activities were such as to irrevocably sever the bond of trust between himself and his employer. This Office is not in a position to reject or dismiss that very legitimate concern. On the contrary, I am satisfied that the grievor's conscious decision to involve himself deeply in serious criminal activity relating to drug trafficking did break the bond of trust between himself and his employer, a high profile enterprise involved in a safety sensitive industry.

For all of the foregoing reasons the grievance must be dismissed.

February 17, 2014

MICHEL G. PICHER
ARBITRATOR