

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4305

Heard in Montreal, April 10, 2014

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

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

DISPUTE:

Dismissal of Mr. Chris More.

JOINT STATEMENT OF ISSUE:

On August 22, 2013, the grievor, Mr. Chris More, was assessed with (1) 40 demerits for being absent from work from July 16-22, 2013 and July 30-August 4, 2013 and (2) dismissal for an accumulation of demerits, for being dishonest with a Company officer about his absences, and for breaching the terms and conditions of his return to work agreement. The matter was grieved.

The Union contends that the grievor is alcohol dependent. While the grievor has taken, and continues to take, real steps to deal with his disability, he experienced a relapse that, among other things, caused his absences. Relapses are recognized and accepted as a normal feature of the rehabilitation process. Consequently, the Company has failed in its duty to accommodate this disabled employee. The grievor's dismissal as excessive, unfair and unwarranted in the circumstances.

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

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

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

FOR THE COMPANY:
(SGD.) D. Burke
Manager Labour Relations

There appeared on behalf of the Company:

B. Sly – Director Labour Relations, Calgary

There appeared on behalf of the Union:

W. Brehl – President, Ottawa

D. Brown – Counsel, Ottawa

AWARD OF THE ARBITRATOR

By the award of this Office is **CROA&DR 4131** the grievor was reinstated into his employment, subject to certain conditions relating to refraining from the consumption of or illicit drugs for a period of two years following his reinstatement. It is not disputed that thereafter, in the period of July 16 to 22, 2013 and July 30 to August 4, 2013 the grievor was absent from duty without authorization and that Mr. More experienced a relapse in his condition as an alcoholic, which caused the absences in question. In fact the record discloses that the grievor was stopped by the Winnipeg police for driving his vehicle while being over the legal limit for alcohol. He was then incarcerated for five days by reason of a violation of a personal recognisance order. Subsequent to these events the Company served the grievor with two Forms 104, assessing him forty demerits and for breaching his previously established contract of employment dated September 17, 2012 and advising him that he was dismissed for the accumulation of demerits.

The Union submits that the grievor's missed work time was by reason of his disability and that the Company effectively failed to accommodate that disability. In the overall context of this case the Arbitrator has some difficulty with that submission.

By the Order of this Office dated July 26, 2012 Mr. More was reinstated into his employment. That reinstatement was conditional upon him remaining free from the consumption of illicit drugs or alcohol for two years following his reinstatement. As that award plainly states “any failure of these conditions shall render the grievor liable to dismissal.” That was the accommodation given to him.

There is no dispute that he failed to observe the conditions established. In these circumstances the Arbitrator can see no basis for further accommodation in relation to the grievor’s condition. I am satisfied that to ask the Company to reinstate the grievor in the face of his demonstrated inability to respect the conditions of his reinstatement would be tantamount to undue hardship.

For the foregoing reasons the grievance must be dismissed.

April 14, 2014

MICHEL G. PICHER
ARBITRATOR