

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 4328

Heard in Montreal, July 10, 2014

Concerning

CANADIAN PACIFIC RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the dismissal of Locomotive Engineer A.

JOINT STATEMENT OF ISSUE:

On February 14, 2013, following an investigation, Locomotive Engineer A was dismissed from Company service "For conduct unbecoming an employee for your engaging in the use of illegal and prohibited substance (cocaine) as evidence by your positive test conducted on December 27, 2012, a violation of CROR General notice, General Rule G, Section 3 item 1.3 and 7.0 and Company Policy OHS 4100, at St-Luc Yard, mile 46.9, Adirondack Subdivision, while working as Locomotive Engineer on Train 253-23 On December 27, 2012." The Union contends that the penalty of discharge is excessive in all of the circumstances.

Further, the Union contends that the Company's termination of Mr. PA's employment breaches the Collective Agreement and the *Canadian Human Rights Act*, including its duty to accommodate Mr. A under the *Act*.

The Union requests that Mr. A be reinstated 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 the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees and denies the Union's request.

FOR THE UNION:
(SGD.) B. Brunet
General Chairperson

FOR THE COMPANY:
(SGD.) L. Smeltzer
Labour Relations Officer

There appeared on behalf of the Company:

B. Sly	– Director, Labour Relations, Calgary
N. Hasham	– Counsel, Toronto
Dr. M. Snider-Adler	– Medical Review Officer DriverCheck,

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Caley Wray, Toronto
B. Brunet	– General Chairman,

J. Campbell
E. Paquette
A.

– Vice-General Chairman,
-- Local Chairman,
-- Grievor

AWARD OF THE ARBITRATOR

On December 27, 2012 the grievor operated train 253-23 as its locomotive engineer. His train was involved in the run through of a main line crossover switch which derailed a locomotive. He was then directed to submit to a post incident substance test. The results of that test returned a positive reading on the oral fluid (swab) test. Following an investigation in relation to the positive substance test indicated, to the Arbitrator's satisfaction, that the grievor used cocaine in the late hours of December 22, or the early hours of December 23, within twenty-four hours of his being available for duty. In fact because the grievor's oral fluid test proved positive for cocaine while his urine test was negative, the inference is that he consumed the cocaine in a relatively short time prior to the taking of the substance test performed at 20:45 on December 27, 2012. In the result, I am satisfied that the Company is correct in its assertion, on the balance of probabilities, that the grievor did consume cocaine at a time and of a quantity which could impact his work performance.

Whatever the specifics of the culminating incident may be, the Union does not deny that the grievor has a dependency on cocaine. Its counsel filed in evidence reporting documents from the Centre de Réadaptation en Dépendance Laval. It appears that that institution assessed the grievor as being cocaine dependent. Its report further relates his attendance and involvement in rehabilitation through individual and group

encounters between October of 2013 and March of 2014. I accept the documentation filed in evidence as sufficient proof of the grievor's efforts at rehabilitation and his success in remaining free from the consumption of cocaine as documented in the report.

It is trite to say that cocaine dependence is a form of disability which bears appropriate accommodation, to the point of undue hardship. On the whole of the material before me I am satisfied that it is appropriate to give the grievor another chance to demonstrate his ability to be a safe and productive employee in control of his drug dependence.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without compensation for any wages or benefits lost. As a condition of reinstatement, for two years following his return to work, employee A shall be subject to random alcohol and drug testing to be administered in a non-abusive fashion, and shall refrain from the consumption of illicit drugs. Any failure to respect this conditions may have the most serious consequences for his employment.

July 14, 2014

MICHEL G. PICHER
ARBITRATOR