

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

CASE NO. 4383

Heard in Calgary, March 12, 2015

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The imposition of a twenty day suspension on September 19, 2013 for an incident involving the unintended movement of equipment on September 9, 2013 and subsequent discharge of Locomotive Engineer H. on January 9, 2014 “for your failure to abide by the terms and conditions set forth in the Employment Contract you signed on October 7, 2013”.

UNION’S EXPARTE STATEMENT OF ISSUE:

On September 9, 2013 Mr. H. was the Locomotive Engineer on Yard Assignment UE13. During the course of the assignment, 8 empty cars were not properly secured which resulted in the cars fouling a switch point. It is the Union’s position that Locomotive Engineer H. did not do or fail to do anything and therefore no discipline is warranted. In the alternative, it is the Union’s position that the discipline was excessive and ought to be reduced.

On October 7, 2013 Locomotive Engineer H. signed an Employment Contract which contemplated two years of unannounced, random substance testing upon his return to a safety critical position. The Company contends that Locomotive Engineer H. was in violation of his Employment Contract. The Union denies any violations of the Employment Contract and contends that the Grievor’s termination was without just cause. In any event, it is the position of the Union that the Grievor suffers from a “disability” within the meaning of the Canadian Human Rights Act requiring the Company to accommodate his disability to the point of undue hardship. His termination was therefore in violation of the Act. The Union requests that the Grievor be reinstated on appropriate terms.

FOR THE UNION:
(SGD.)G. Edwards
General Chairman

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

- S. Lang – Legal Counsel, Calgary
- C. Wolack – Assistant Superintendent, Vancouver
- B. Medd – Labour Relations Officer, Calgary

And on behalf of the Union:

- K. Stuebing – Counsel, Caley Wray, Toronto
- G. Edwards – General Chairman, Calgary
- D. Roberts – Local Chair, Thunder Bay
- H. – Grievor, Thunder Bay

AWARD OF THE ARBITRATOR

The grievor received a twenty-day suspension for a CRO Rules violation. He was then terminated for violation of a Continuing Employment Contract signed on October 2013 under which he was subject to two years of unannounced, random substance testing, along with other conditions, upon his return to a safety critical position.

Given the conclusions reached in this Award on the discharge, I need not deal with the suspension issued for the CRO Rules violation.

The grievor entered into a Continuing Employment Contract, which provided a number of conditions. Shortly after, the grievor was in breach of certain conditions of the Continuing Employment Contract, and was terminated. The Company details and relies on the breach of the Continuing Employment Contract and says it has met its duty to accommodate and the discharge should be upheld. The Union relies on the *Canadian Human Rights Act* and the duty to accommodate to the point of undue hardship. It also relies on the grievor's long service.

The Union has produced some post discharge evidence but the efforts begin 5 months after the termination and are neither satisfactory nor sustained. Even if I were to

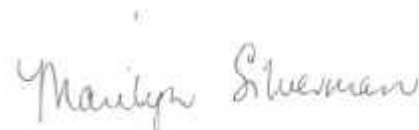
consider the post discharge evidence, that evidence is not sufficiently clear and compelling (**CROA 2716**) to reach the conclusion that the grievor should be returned to work in a safety critical position. In view of the breach of the Continuing Employment Contract and the post discharge evidence, the Company cannot be required to reinstate the grievor to active employment.

The grievor's seniority dates back to 1977. It appears from what has been presented that if reinstated from the date of his termination up until November 1, 2014, the grievor would be eligible to receive an unreduced pension based on age and years of service. That remedy is appropriate and equitable in this case. This remedy was ordered in **CROA&DR 4375** where a long service employee was reinstated for the purpose of exercising his entitlement to his pension. That result was also ordered in **CROA&DR 4028 and 4231**.

Accordingly, the grievance is upheld in part. I order the period from the date of the grievor's termination to the date he is eligible to retire (November 2014), to be a time served suspension without compensation. He shall take his pension effective at that date, failing which the matter is to be returned to me for further disposition.

I remain seized to deal with any issues arising as to the implementation of this Award.

April 10, 2015



MARILYN SILVERMAN
ARBITRATOR