

CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4472

Heard in Calgary, June 15, 2016

Concerning

CANADIAN PACIFIC RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Union advanced an appeal of the termination of Locomotive Engineer John Yuhas of Red Deer AB.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

Please be advised that you have been dismissed from Company service for the following reason(s):

For failing a "For Cause" Substances Test for alcohol after accepting a call at 2350 for train 401-22 at the away from home terminal In Hardisty on April 22nd, 2015.

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 Engineer Yuhas's employment breaches the Collective Agreement and the Canadian Human Rights Act, including its duty to accommodate Engineer Yuhas under the Act. Engineer Yuhas has demonstrated his commitment to a full recovery, he is a long service employee with 30 years of dedicated service.

The Union requests that Engineer Yuhas 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 has not responded to the Union's request.

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

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

C. Clark – Manager Labour Relations, Calgary
L. Smeltzer – Labour Relations Officer, Calgary

There appeared on behalf of the Union:

M. Church – Counsel, Caley Wray, Toronto
G. Edwards – General Chairperson, Revelstoke

H. Makoski	– Senior Vice General Chairperson, Calgary
T. Doherty	– Local Chairman, Red Deer
J. Yuhas	– Grievor, Red Deer
H. Yuhas	– Observer, Red Deer

AWARD OF THE ARBITRATOR

The Grievor is a long service employee with thirty years of service. He has a history of alcohol addiction, and has sought treatment at different times in his life to treat his disability. Previous to this grievance, the Grievor was dismissed in 2006, for actions which were caused by his alcohol addiction. An agreement was entered into between the Company and the Union to reinstate the Grievor, after he completed treatment and proved he was fit to return to work in March 2007. The Grievor had no other incident related to alcohol addiction until a relapse in April 22, 2015.

On April 22, 2015, the Grievor accepted a call while under the influence of alcohol. The Grievor admitted that he violated Company's policy by drinking alcohol while being subject to call. The relapse occurred while the Grievor was trying to cope with challenging personal events which overwhelmed him. In February 2015, his already ill father was diagnosed with colon cancer and faced a bleak prognosis, passing away four months later on June 5, 2015. During this time, the Grievor's marriage was under great strain, leading to separation.

The Company admits that the Grievor has a recognized disability which requires accommodation but submits that in the present case it has met the point of undue hardship. The Company invokes essentially security concerns. It states that any

accommodation will sacrifice safety for employees or others and that the Company cannot tolerate such risks and cannot tolerate a wilful violation of the rules regarding drugs and alcohol policy and procedure. In summary, the Company claims:

“The rights of the Grievor cannot be seen to outweigh the safety of his coworkers and the community in which he operates. On April 22, 2015 the Grievor without hesitation or consideration for his Conductor or community attempted to operate a train while impaired. The safety risk posed by the Grievor cannot be tolerated or mitigated as he clearly downplayed his level of intoxication and his ability to operate the train.”

The Company also sustains that Grievor’s attempts to engage in ongoing recovery since the dismissal is not relevant to the Company’s decision and therefore is not admissible. Since the decision of Supreme Court of Canada in *M.U.A., local 6869 c. Cie minière Québec Cartier*, [1995] 2. R. C. R. 1095, such evidence as been considered relevant in some cases such as the present one. The Company was at the time of the dismissal well aware of the Grievor’s alcohol addiction.

In **CROA&DR 4143**, Arbitrator Picher ordered the Grievor reinstated and considered the following mitigation factors:

“Firstly, it must be borne in mind that alcoholism is an illness which merits efforts at accommodation to the point of undue hardship... it is incumbent on a board of arbitration to consider the entire picture in a case such as this. The material before me confirms that following his discharge the grievor engaged in a course of action which has led to a period of close to a year and a half of sobriety on his part. On his behalf the Union has tendered in evidence a number of reports and documents giving substance to the fact that the grievor has successfully completed treatment programs and that he had been a faithful participant in the activities of Alcoholics Anonymous. On the whole, I am satisfied that this is an appropriate case for reinstatement fashioned to protect the Company’s legitimate interests.”

Arbitrator Silverman in a recent case reinstated an employee that had alcohol addiction:

“In this case the grievor committed a serious infraction worthy of serious consequences. He operates in a safety critical environment. However, he has also provided substantial and ongoing evidence supportive of his rehabilitation efforts. He has participated in a residential treatment program following his discharge. His rehabilitation counsellor from that program provided a letter attesting to the grievor’s participation and commitment. He has participated in AA. The grievor has a disability; alcohol addiction.

In view of the grievor’s long service, the requirements to accommodate the grievor to the point of undue hardship under the *Canadian Human Rights Act*, the grievor’s continuing and ongoing rehabilitation efforts and the relevant **CROA&DR** jurisprudence, reinstatement with conditions is appropriate.¹

Finally in **CROA&DR 3355**, Arbitrator Picher emphasizes that alcoholism can involve a relapse:

“The material before the Arbitrator confirms that Mr. Martin appears to have remained in control of his condition as an alcoholic from the time of his reinstatement in 1996 to the time of the unfortunate events leading to his second discharge on December 10, 2001. Having carefully reviewed the file, and bearing in mind the obligation of accommodation that is owed to a person suffering from the medical disability of alcoholism, a condition which can involved a relapse, I am satisfied that this is an appropriate case for fashioning a remedy that will give the grievor a last chance, in terms which will also protect the Company’s interests.”

In the present case, the evidence demonstrate that the Grievor is truly remorseful for the incident that happened on April 22, 2015 and that he quickly took corrective

¹ **CROA&DR 4375.**

steps since then and is successful. The Grievor is in control of his condition as he was for eight years prior to this last relapse that can be in part related to stressful events that occurred in his life. Nevertheless, the Grievor did commit a serious violation and must assume the consequences of his relapse. However, I am satisfied that this is an appropriate case to give a last chance to the Grievor to reinstate his employment without undue hardship for the Company.

Accordingly, the grievance is therefore allowed in part. The Arbitrator directs that the Grievor be reinstated into his employment, without loss of seniority but without compensation for any wages and benefits lost, subject to the following conditions:

- The Grievor shall not returned to work until such time as he is confirmed by the Company's medical officer to be physically fit to work, including any addiction problems assessed which the Company's medical officer deems appropriate;

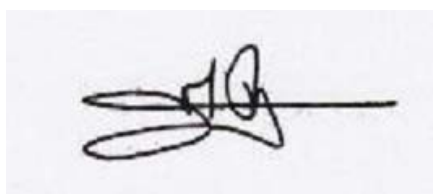
Upon being confirmed fit to return to work by the Company's medical officer the Grievor shall be subject to the following conditions for a period of 2 years:

- The Grievor shall abstain from the consumption of alcohol or drugs;
- The Grievor shall be subject to random, unannounced drug and alcohol testing, to be administrated in a non-abusive fashion;
- The Grievor shall attend regular AA meetings to be confirmed in writing to the Company by an appropriate officer of that organization on a quarterly basis.

The Grievor will be subject to discharge if the return to work conditions are not complied with.

I remain seized to the extent that clarification is required in respect of the conditions imposed.

June 21, 2016

A handwritten signature in black ink, appearing to read 'M. Flynn', is centered within a light gray rectangular box. The signature is stylized with loops and a long horizontal stroke extending to the right.

MAUREEN FLYNN
ARBITRATOR