

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.1704

Heard at Montreal, Thursday 15 October 1987

Concerning

CANADIAN PACIFIC LIMITED

And

UNITED TRANSPORTATION UNION

DISPUTE:

The assessment of 30 demerit marks against the record of Trainman S. D. Keal, Moose Jaw for - "conduct unbecoming an operating employee in train service, Moose Jaw, Saskatchewan, July 19, 1986."

JOINT STATEMENT OF ISSUE:

Mr. S. D. Keal was required to appear at Provincial Court on July 30, 1986 as a result of a charge by the Crown of possession of a controlled substance, to wit, hashish. Proceedings on this charge have been stayed. This matter was investigated by the Company following which Mr. Keal was assessed the discipline noted in the Dispute.

The Union contends that the Company had no right to prejudice the case and assume Mr. Keal's guilt. The Union further contends that the Company has not demonstrated the validity that such a charge alone can be construed as conduct unbecoming an employee. Accordingly, the Union requests the removal of the discipline assessed.

The Company contends that the evidence adduced at its investigation warrants the discipline assessed.

FOR THE COMPANY:

(SGD) E. S. CAVANAUGH
General Manager
Operation and Maintenance

FOR THE UNION:

(SGD) ROBERT NAVET
for: General Chairman

There appeared for the Company:

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| - G. W. McBurney | - Assistant Supervisor, Labour Relations, Winnipeg |
| - B. P. Scott | - Labour Relations Officer, Montreal |
| - D. A. Lypka | - Supervisor, Labour Relations Winnipeg |

There appeared for the Union:

- W. M. Jessop - General Chairman, Calgary
- Ian Robb - Local Chairman, Thunder Bay
- Robert D. Nault - Vice-General Chairman, Kenora

AWARD OF THE ARBITRATOR

The material establishes that Trainman Keal was charged with the possession of hashish while off duty. The alleged possession was some two hours prior to his acceptance of a call to work at 0115 on July 20, 1986. The criminal charges against him were eventually stayed by the Court, apparently because of undue delay in bringing the matter on for trial, contrary to the Canadian Charter of Rights.

Trainman Keal refused to answer any of the questions put to him during the Company's investigation concerning his alleged drug possession, or whether he was involved in the use of drugs. On July 25, 1986, he further refused to comply with the Company's request that he undergo a drug screening test.

The seriousness of drug related activities as they may impact on the safety of the Company's operation has been canvassed in CROA 1703. While the presumption of innocence may have its place in a criminal prosecution, when objective circumstances indicate the likelihood that an employee uses drugs or is drug dependent, an employer in the position of a railroad, with high obligations of safety towards its employees and the public, is entitled to a full and satisfactory explanation from the employee, particularly one who works in a safety sensitive job.

In the instant case, the Company was faced with an employee in the running trades who was charged with the possession of a prohibited drug two hours prior to going on duty, and who refused to answer any questions respecting whether he was involved in drug use. He also refused to submit to a drug test. In the circumstances, the Company was justified in drawing adverse inferences about the employee's involvement with drugs in circumstances that could seriously affect his work performance.

I am satisfied that the Company had grounds to discipline the grievor and that, given the employee's refusal to co-operate, the imposition of thirty demerits was within the appropriate range of penalty. For these reasons, the grievance must be dismissed.

MICHEL G. PICHER
ARBITRATOR