

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2033

Heard at Montreal, Wednesday, 13 June 1990

Concerning

CANADIAN PACIFIC LIMITED

And

UNITED TRANSPORTATION UNION

DISPUTE:

Reinstatement of Trainman K.E. Morrison of Smiths Falls, Ontario, following his dismissal for accumulation of 85 demerit marks.

JOINT STATEMENT OF ISSUE:

On July 31, 1988, Mr. K.E. Morrison's employment record was debited with 15 demerit marks for failure to ensure that the west end crossover switch was properly lined for movement under his control, a violation of UCOR Rule 104, paragraphs 1, 4, and 6, resulting in a run-through switch and subsequent derailment of CP locomotive DE 4232 at Mileage 174.2 Belleville Subdivision on July 10, 1988.

Additionally, on July 31, 1988, Mr. K.E. Morrison was assessed 20 demerit marks for failure to be available for calls to duty as a spare trainman, for the period of July 21 to July 26, 1988.

The above discipline resulted in the grievor's dismissal on July 31, 1988 for accumulation of demerit marks.

The Union requests that Mr. Morrison be reinstated on compassionate grounds without compensation.

The Company denies the Union's request.

FOR THE UNION:

(SGD) J. R. AUSTIN
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD) E. S. CAVANAUGH
GENERAL MANAGER, IFS
OPERATION & MAINTENANCE

There appeared on behalf of the Company:

H. B. Butterworth -- Assistant Supervisor, Labour Relations, Toronto
B. P. Scott -- Labour Relations Officer, Montreal
J. J. Worrall -- Assistant Supervisor, Labour Relations, Toronto
R. Egan -- Assistant Supervisor, Labour Relations, Toronto
F. O. Peters -- Labour Relations Officer, Montreal

And on behalf of the Union:

J. R. Austin -- General Chairperson, Toronto
B. Marcolini -- National Vice-President, Ottawa
J. M. Hone -- Research Director, Ottawa
K. E. Morrison -- Grievor

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied that in the circumstances of this case the Union has made a compelling case for the reinstatement of the grievor on conditions. Mr. Morrison is an alcoholic who, since his discharge, has pursued an active and successful course of rehabilitation which has involved both in-patient treatment at a rehabilitation centre and faithful pursuit of ongoing support programs of both Alcoholics Anonymous and Narcotics Anonymous. In so finding I am persuaded that much of his prior record, which he apparently chose not to grieve, was caused by his then inability to control his condition.

While it is true, as the Company argues, that Mr. Morrison is not a long service employee, that cannot be viewed as a compelling reason for failing to recognize that the legitimate interests of both the employer and the employee with such a medical disability can be reasonably accommodated. Nor, in my view, is it fatal to the grievor's case that he did not seek rehabilitative assistance until after his discharge. Notwithstanding the comments of the Arbitrator in CROA 1341, where it is shown that an employee has, in good faith, sought and obtained assistance for alcoholism or drug addiction even after discharge, such evidence may be appropriately looked to for the purposes of the exercise of an arbitrator's remedial discretion in all of the circumstances (see CROA 2001). Obviously, where there is a transparent and insincere attempt of an employee to shelter behind a belated request to participate in the Company's Employee Assistance Program, without more, there may be little or no basis for the favourable exercise of that discretion. That, however, is not so in the instant case.

For the foregoing reasons the grievor shall be reinstated into his employment, without compensation for wages and benefits lost, and without loss of seniority. The grievor's reinstatement shall be conditional upon his agreeing to maintain ongoing participation, for not less than two years from his return to work, in the meetings and other programs of Alcoholics Anonymous and Narcotics Anonymous, with responsible officers of these organizations to provide to the Company written confirmation of Mr. Morrison's participation on a quarterly basis. He shall, moreover, be subject to random testing for drugs or alcohol, for a period of not less than two years, provided that the frequency of such tests shall not be unreasonable. The thirty-five demerits assessed against Mr. Morrison for the incidents of July, 1988 shall be removed from his record, which shall stand at fifty demerits at the time of his reinstatement. While it appears doubtful that the Arbitrator has any jurisdiction to reduce the grievor's demerits below that point, as his prior discipline was never grieved,

the Company's officers should be aware of the Arbitrator's observations respecting the weight that should be ascribed to that record in light of Mr. Morrison's prior alcoholic condition. By the same token, the grievor himself must appreciate the gravity of his circumstances in the event of any further serious disciplinary infraction.

June 15, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR