

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2039

Heard at Montreal, Thursday, 14 June 1990

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

The dismissal of Locomotive Engineer C.L. Jackson, Lethbridge, Alberta, on September 29, 1988, for "conduct incompatible with your employment as evidenced by your involvement with the possession and cultivation of marijuana".

JOINT STATEMENT OF ISSUE:

Following an investigation initiated on September 16, 1988, Locomotive Engineer Jackson was dismissed from the employ of CP Rail.

The Brotherhood appealed the dismissal of Locomotive Engineer Jackson and requested his reinstatement without compensation.

The Company has declined the Brotherhood's appeal and refuses to reinstate Mr. Jackson.

FOR THE BROTHERHOOD:

(SGD) T. G. HUCKER
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) J. M. WHITE
GENERAL MANAGER
OPERATION & MAINTENANCE, HHS

There appeared on behalf of the Company:

D. A. Lypka -- Unit Manager, Labour Relations, HHS, Vancouver
K. E. Webb -- Labour Relations Officer, Vancouver
B. P. Scott -- Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

T. G. Hucker -- General Chairman, Calgary
B. Marcolini -- National Vice-President, UTU, Ottawa

AWARD OF THE ARBITRATOR

On August 24, 1988, the Royal Canadian Mounted Police searched the grievor's residence and found him in possession of a number of marijuana plants which he was admittedly growing for the purposes of drug consumption. He was subsequently convicted and fined for possession of marijuana. He also tested positive for marijuana on the taking of a urine drug screening test on September 16, 1988.

It is common ground that the evidence does not disclose that the grievor used an intoxicant while he was on duty or subject to duty. For reasons related in a prior award of this Office, a positive urine test is not necessarily of itself evidence of conduct that would justify the discharge of an employee (see CROA 1925). Moreover, depending on the overall factual context, the isolated possession of a small amount of marijuana for use on a casual, social occasion, remote in time from an employee's on duty service, may fall short of justifying his or her discharge from employment.

The instant case discloses something different, however. The material establishes beyond controversy that Mr. Jackson was involved in something more than the casual possession of a small amount of marijuana. By his own admission, he was knowingly involved in both the production and possession of marijuana for the purposes of its consumption. While he states that he was growing it for his girlfriend and a roommate, the Arbitrator has difficulty accepting that explanation in all of the circumstances.

In the Arbitrator's view, involvement in the chemical or horticultural production of a prohibited narcotic is an illegal activity which cannot be reconciled with the responsibilities of a locomotive engineer. The Company must have the fullest confidence that persons with the safety sensitive responsibilities of an engineman are not involved to such a degree in the drug culture. Apart from the taint of illegality involved, such activities plainly undermine the confidence which managers, other employees and the public at large are entitled to have with respect to the trustworthiness and overall character of individuals charged with the safe operation of trains. They are also entitled to be free of concerns that persons who admittedly produce a prohibited drug for the consumption of others might distribute their wares within the workplace.

On the whole the Arbitrator is satisfied that the Company was justified in its conclusion that the drug-related activities of the grievor are incompatible with his continued employment as a locomotive engineer.

For the foregoing reasons the grievance is dismissed.

June 15, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR