

TRANSLATION

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2238

Heard at Montreal, Tuesday, 10 March 1992

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The discharge of Train Movement Clerk G. Huot ``for conduct not compatible with his continuing in service, that is for possession of cocaine for the purpose of trafficking'' [translation] effective May 16, 1991.

JOINT STATEMENT OF ISSUE:

On the evening of May 16, 1991, Mr. Huot was assigned as a Train Movement Clerk from 18:00 to 02:00 hours. At approximately 19:30 hours, Mr. Huot, who was under surveillance by police officers from the Quebec Provincial Police, was observed leaving an establishment with a bag which he dropped into the vehicle in which he was travelling. Some time later, the police officer intercepted the vehicle and found the bag which contained 2 ounces of cocaine. The grievor was arrested and incarcerated.

Following an investigation of the facts surrounding this case, Mr. Huot was dismissed for the reasons outlined above.

The Brotherhood maintains that the disciplinary measure assessed to Mr. Huot is too severe and requests the reinstatement of the grievor with full compensation.

The Company declined the appeal.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(SGD.) T. N. STOL

(SGD.) J. E. PASTERIS

NATIONAL VICE-PRESIDENT

for: VICE-PRESIDENT, ST. LAWRENCE REGION

There appeared on behalf of the Company:

J. E. Pasteris

Manager, Labour Relations, St. Lawrence Region, Montreal

R. Faucher

Labour Relations Officer, Montreal

R. Paquette

Manager (System), Labour Relations, Montreal

A. Poitras

Special Agent, CN Police, Montreal

B. Lepor,

Coordinatoor, Points satellites, Montreal

And on behalf of the Brotherhood:

A. Wepruk

Representative, Montreal

M-A. Gosselin

Local Chairman, Montreal

G. Huot

Grievor

AWARD OF THE ARBITRATOR

It is not disputed that the grievor left the Jonqui re Carload Centre during his tour of duty in order to take possession of a large quantity of cocaine. He claims that the drug in question had been in his possession for many months, and that it had been stored in the washroom of a flea market of which he is the owner. According to the testimony of Mr. Huot given at the hearing, evidence given under the protection of the Canada Evidence Act and the Canadian Charter of Rights and Freedoms, he had come into possession of this cocaine when it was left in a bar, of which he is also the owner, by someone who has since deceased. According to Mr. Huot, he had then transferred the cocaine to the washroom at the flea market. He stated that on the day in question he feared a police raid, following a warning which he had received, and that he had then absented himself from work in order to get rid of the drug. The Arbitrator finds that explanation to be very unbelievable. According to the agreed facts, Mr. Huot returned directly to work after having obtained the cocaine from the flea market, without making any effort to get rid of it. On the contrary the evidence establishes that his girl friend, who had accompanied him, retained possession of the two ounces of cocaine. A little later the Quebec Provincial Police found the drug in the car following a search. The Employer has a legitimate interest to know that its employees are not implicated in the possession of large quantities of narcotics, above all where the circumstances raise the probability that that possession is for the purposes of illegal traffic. In such a circumstance, it is incumbent on an employee to furnish a clear and convincing explanation concerning his or her activities. In the instant case, the explanation of Mr. Huot leaves much to be desired, and cannot be accepted by the Arbitrator. The Arbitrator is of the opinion that his possession, over many months, of a large quantity of cocaine valued at many thousands of dollars, and the movement of that drug during his tour of duty was, on the balance of probabilities, for illegal purposes which justified the decision of the Company to terminate his employment, notwithstanding his years of service. (See CROA 1703, 1704, 2038, 2039 and 2090.) For the foregoing reasons the grievance must be dismissed.

March 13, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR