CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2244
Heard at Montreal, Thursday, 12 March 1992
concerning
CANADIAN PACIFIC LIMITED
and
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
DISPUTE:
Reinstatement of Locomotive Engineer W.A. Britton, London, Ontario.
JOINT STATEMENT OF ISSUE:
On February 20, 1990, Engineer Britton was ordered for 1845 hours to deadhead from London to Toronto on VIA passenger train No. 78. Locomotive Engineer Britton did not complete this deadhead movement, leaving the train without authorization at Woodstock and returning home. He further failed to report for duty at the assigned location at London prior to the deadhead movement. After reporting for duty, it was alleged that he used profane language in the presence of VIA passengers at London and threatening and profane language and gestures towards the train crew of the VIA train while on the train and when detraining at Woodstock. It was further alleged that he used profane language and was insubordinate to a Company officer when that officer contacted him to obtain an explanation for his failure to complete the deadhead.
Following an investigation into these incidents, Locomotive Engineer Britton was assessed 50 demerit marks which resulted in his discharge for accumulation of 70 demerit marks effective March 23, 1990.
The Brotherhood has appealed the dismissal of Mr. Britton requesting that he be reinstated on the grounds that the penalty was too severe.
The Company has refused to reinstate Mr. Britton.
FOR THE BROTHERHOOD:
FOR THE COMPANY:
(SGD.) G. N. WYNNE
(SGD.) J. S. McLEAN
GENERAL CHAIRMAN
for: GENERAL MANAGER, OPERATIONS & MAINTENANCE, IFS

There appeared on behalf of the Company:
J. S. McLean
Manager, Labour Relations, IFS, Toronto
R. A. Colquhoun
Manager, Industrial Relations, Montreal
B. P. Scott
Labour Relations Officer, Montreal
G. Chehowy
Labour Relations Officer, Montreal
H. B. Butterworth
Assistant Manager, Labour Relations, IFS, Toronto
K. J. O'Brien
Deputy Superintendent, London
And on behalf of the Union:
G. N. Wynne
General Chairman, Smiths Falls
W. Foster
Local Chairman, London
W. A. Britton
Grievor

AWARD OF THE ARBITRATOR

It is clear from the material before the Arbitrator, and the representations heard at the hearing, that conduct engaged in by Locomotive Engineer Britton on February 20, 1990 reflects a serious pattern of unruly and disrespectful conduct, extending to open insubordination of a Company officer. That conduct was largely unexplained on the basis of the information before the Company at the conclusion of the grievor's disciplinary investigation, save that he expressed some reservations as to whether he might have a drinking problem at the time.

At the hearing, without any foreknowledge on the part of either the Brotherhood or the Company, Mr. Britton disclosed, for the first time, that in fact he had suffered from a condition of extreme stress, triggered in part by his experience of having fatally struck a child while in control of a locomotive. He relates that his problems with stress degenerated to a degree of drug addiction, the conditions of which were only recognized following his completion of an in-patient 28-day treatment program conducted pursuant to the rehabilitation program undertaken on the advice of EAP officers after his discharge. He relates that he subsequently attended meetings of Narcotics Anonymous and succeeded in overcoming his addiction. By Mr. Britton's account, he no longer has a drinking problem and has been able to control his drug dependency for a substantial period of time. He further explained that he never disclosed his drug problem to either the Brotherhood or the Company, because he was given to understand by someone from the EAP program, apparently from another union, that he would be given more generous consideration if he was considered to have a drinking problem.

The case, as it emerged at the hearing, is clearly extraordinary, as acknowledged by both parties. In the Arbitrator's view, however, the account of events related by Mr. Britton is both candid and credible. The evidence discloses a person afflicted by a medical condition who, with great personal effort, has apparently overcome it to gain control of his personal life. As the Company's representative points out, however, the evidence before the Arbitrator with respect to the grievor's addiction problem, his abstinence from drugs, and the prognosis for continued success are unsupported by any medical or professional documentation. The issue then becomes whether that shortcoming should be seen as an insurmountable barrier to the possible reinstatement of Mr. Britton. The grievor is an employee of fifteen years' service. While his record is not without blemish, it contains nothing resembling the incident which led to his discharge. In the circumstances it appears to the Arbitrator that the interests of the Company can be fully protected, while an opportunity is given to the grievor to demonstrate that he is capable of rendering reliable service to the Company in the future. As a first condition, however, the grievor must be able to establish, on the basis of expert medical opinion, that he is not an alcoholic, and that his drug dependency has been under control for a sufficiently sustained period of time as to confirm his claim of rehabilitation. Additionally, any return to work must be subject to conditions that will allow the Company to monitor Mr. Britton, through alcohol and drug testing, to ensure that he does not consume alcohol while on duty or subject to duty, and that he remains free of the consumption of illegal drugs at any time. In determining this last condition the Arbitrator is mindful of Mr. Britton's own remark that he is a cocaine addict, and that any further involvement with cocaine would, in all likelihood, have fatal consequences.

For the foregoing reasons the Arbitrator orders that the grievor be reinstated into his employment six months from the date of this award, subject to the following conditions:

1.

In the period of six months following this award Mr. Britton shall obtain from a qualified medical practitioner, selected jointly by the parties, a documented opinion addressed to the parties confirming that he is not an alcoholic, and that he has been free from the use of any non-prescription drug or narcotic for not less than six months. For the purposes of ascertaining that he is not alcohol dependent and his freedom from drug use for the period of six months, Mr. Britton shall consent to such periodic urine, blood or other tests as the medical practitioner, in consultation with the parties, determines to be appropriate, both as regards the nature and the frequency of the tests.

2.

At the conclusion of the six month period the medical practitioner shall further confirm, in his written report to both parties, that the grievor's problems in relation to stress are under control so as to permit him to resume the duties of his employment.

3.
Upon satisfaction of conditions 1 and 2, Mr. Britton shall be returned to active employment, without compensation, and without loss of seniority, with his disciplinary record to stand at twenty demerits.
4.
For a period of not less than three years following his return to active service, Mr. Britton shall be subject to periodic random testing, not to be administered in an abusive manner, to determine that he is free of alcohol while on duty or subject to duty, and that he has abstained from the consumption of any narcotic or non-prescription drug, at any time.
5.
Following the expiry of the three-year period, for such further period as the Company deems appropriate, Mr. Britton may be required to undergo an alcohol or drug test twice yearly, at such times as may be reasonably determined by the Company.
March 13, 1992
(Sgd.) MICHEL G. PICHER
ARBITRATOR