

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2305
Heard at Montreal, Wednesday, 9 December 1992
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal the discharge of Conductor J.M. Dick, London, Ontario.

JOINT STATEMENT OF ISSUE:

Effective April 16, 1992 Mr. Dick was discharged from Company service for violation of C.R.O.R. General Rule G while employed as Conductor on Road Switcher 581, March 21, 1992.

The Union, prior to Mr. Dick's dismissal, requested that Mr. Dick be afforded the provisions of the Union Management Agreement on the Control of Drug and/or Alcohol Abuse.

The Company declined this request.

Subsequently, Mr. Dick was discharged from the service of the Company for violation of Rule G. The Union appealed the discharge of Mr. Dick on the grounds that there were mitigating circumstances and as such the discipline assessed is excessive. The Union requested that Mr. Dick be reinstated without loss of seniority and without loss of benefits.

The Company declined the Union's appeal.

FOR THE UNION:

FOR THE COMPANY:

(SGD.) M. P. GREGOTSKI

(SGD.) A. E. HEFT

GENERAL CHAIRPERSON

for: VICE-PRESIDENT, GREAT LAKES REGION

There appeared on behalf of the Company:

A. E. Heft

Manager, Labour Relations, Toronto

D. Brodie

Labour Relations Officer, Montreal

A. Vaasjo

Labour Relations Officer, Toronto

And on behalf of the Union:

G. J. Binsfeld

Secretary Treasurer, G.C.A., Fort Erie

M. P. Gregotski

General Chairperson, Fort Erie

B. G. Brodhagen

Witness

J. M. Dick

Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond controversy, that a violation of Rule G occurred. Mr. Dick was found in the possession of alcohol during his on duty hours, while enroute in his personal vehicle to join his train crew, who were already working. The grievor acknowledges that he consumed alcohol on his way to work.

The sole issue in the case at hand is the appropriate measure of discipline, and whether mitigating circumstances justify a reduction in penalty. The evidence presented to the Arbitrator confirms that Mr. Dick is an alcoholic. He has admitted to his condition, and following the incident giving rise to his discharge he sought rehabilitative assistance. He successfully completed an in-patient residential program of rehabilitation at the Renascent Centre in Toronto and has, thereafter, consistently participated in meetings and programs of Alcoholics Anonymous. There is no issue taken before the Arbitrator with respect to the *bona fides* of Mr. Dick's medical condition, or of his efforts and success in rehabilitation and the control of his condition.

What other factors are to be considered? There are, it appears to the Arbitrator, two factors of telling weight in the case at hand. Mr. Dick is an employee of some thirty years' standing. During the entirety of his years of service to the Company he has not once been disciplined for any reason. In the Arbitrator's view, notwithstanding the submission of the Company that Mr. Dick should be summarily discharged for having violated Rule G because he did not seek assistance for his alcohol problem before the precipitating incident, the Arbitrator is persuaded that fairness, and the protection of the legitimate interests of both parties can be served by a more equitable approach. It appears to me that the reinstatement of the grievor, subject to certain conditions, and without compensation for wages lost, is appropriate in the circumstances.

For the foregoing reasons the Arbitrator directs that the grievor be reinstated into his employment, forthwith, without compensation for wages or benefits lost during the period since his removal from service and without loss of seniority. For the purposes of clarity, however, Mr. Dick shall be entitled to the benefits available to all employees adversely affected by the Goderich Exeter Subdivision sale, in accordance with the agreement negotiated between the parties in respect of that transfer of property. In the Arbitrator's view the protections gained by the employees in respect of that agreement must be understood to be in recognition of their rights, vested over many years of service. I can see no reason why the grievor should not be entitled to participate in those benefits. He should not, however, have the advantage of wages or benefits for the period between his removal from service and his reinstatement, which period shall be deemed a suspension. Further, the Arbitrator directs that the reinstatement of the grievor shall be conditional upon his continuing to participate, for a period of not less than two years, in the activities of Alcoholics Anonymous. He shall provide to the Company, on a quarterly basis, written confirmation from an appropriate office of that organization, confirming his ongoing attendance and participation in its activities on a regular basis. Lastly, the grievor's reinstatement is conditional upon his accepting to be subject to periodic testing for alcohol or drugs, on a random basis by the Company, provided that it is not abusive, for a period of not less than two years from the date of his reinstatement.

December 11, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR