

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2416

Heard in Montreal, Wednesday, 10 November 1993  
concerning  
CANADIAN NATIONAL RAILWAY COMPANY

and  
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS  
[BROTHERHOOD OF LOCOMOTIVE ENGINEERS]

DISPUTE:

Appeal the discharge of Locomotive Engineer P. C. Hardwick, Hamilton.

JOINT STATEMENT OF ISSUE:

On 27 September 1992, Hamilton-Wentworth Regional Police Drug Squad executed a search warrant at the residence of P. Hardwick, 477 Montsberg Road, Freelon, Ontario. During the search of P. Hardwick's residence a substantial quantity of marijuana was seized. In addition, materials for growing and harvesting marijuana were also seized by the Police. Subsequent to the search and seizure, P. Hardwick was arrested and charged with cultivating marijuana, and possession of marijuana for the purpose of trafficking.

Following an investigation of the matter, Locomotive Engineer Hardwick was discharged effective 10 February 1993 for conduct incompatible with employment in a safety sensitive position.

The Brotherhood contends that the discipline assessed is too severe and further contends that there are mitigating factors which should be taken into consideration that would warrant the substitution of the discipline assessed to another form of discipline to provide Locomotive Engineer Hardwick an avenue to be reinstated.

The Company disagrees with the Brotherhood's contentions and has declined the Brotherhood's request.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(SGD.) C. HAMILTON

(SGD.) A. E. HEFT

GENERAL CHAIRMAN

FOR: VICE-PRESIDENT, GREAT LAKES

REGION

There appeared on behalf of the Company:

A. E. Heft - Manager, Labour Relations, Toronto  
K. Peel - Assistant Regional Counsel, Toronto  
R. Bateman - Labour Relations Officer, Toronto  
D. W. Coughlin - Manager, Labour Relations, Montreal  
V. J. Vena - Coordinator, Transportation, Montreal  
J. Sauv, - Manager, Train Service, Niagara Falls

And on behalf of the Brotherhood:

J. Shields - Counsel, Ottawa  
C. Hamilton - General Chairman, Toronto  
T. G. Hucker - Vice-President, Ottawa  
R. Robinson - Local Chairman, Hamilton  
R. Woehl - Local Chairman, Hornepayne  
P. C. Hardwick - Grievor

#### AWARD OF THE ARBITRATOR

The evidence discloses, to the Arbitrator's satisfaction, that Mr. Hardwick was involved in the large scale growing and harvesting of marijuana in circumstances which would cause the Company grave concern. Among the materials seized at his residence are scales and other paraphernalia normally associated with the distribution of drugs. While it is true that he was convicted, apparently on the basis of a plea bargain, of the lesser offence of cultivating a narcotic, without reference to the purpose of trafficking, the picture presented to the employer, which is responsible of the assignment of Mr. Hardwick as a locomotive engineer in a safety sensitive position, gives considerable pause.

A number of prior decisions in this Office have considered the appropriate response in a case of this kind (e.g. CROA 1703, 2039, 2296). In the case at hand, given the quantity of marijuana in the grievor's possession, being in the order of some twelve pounds, and the scales and other paraphernalia in his possession, the Arbitrator is satisfied that the case is justifiably viewed as similar to those cited above.

The Brotherhood argues the application of Re Dorr-Oliver-Long Ltd. and United Steelworkers, Local 469, (1973), 3 L.A.C. (2d) 193 (O'Shea). For the purposes of clarity, it should be understood that to the extent that the observations made in the decisions of this Office may be seen as different from the approach taken in Re Dorr-Oliver-Long Ltd. at p. 200, whatever considerations may apply in a closed industrial plant, I do not consider that the reasoning of that award is necessarily appropriate or correct in the context of running trades employees and others occupying a safety sensitive position in the operations of a railway. Where involvement with the production or distribution of drugs is concerned, employees who operate heavy equipment in the transportation industry in unsupervised circumstances and in locations which can involve substantial risk to the public must be held to the highest standards. For reasons related in prior awards, absent compelling evidence, substantial involvement in the cultivation or production of prohibited narcotics is incompatible with the ongoing employment of a person regularly entrusted with the movement of trains. In the instant case that remains so, notwithstanding the grievor's seventeen years of service, and his prior disciplinary record.

For the foregoing reasons the grievance must be dismissed.

12 November 1993

(Sgd.) MICHEL G. PICHER  
ARBITRATOR