

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2477**

Heard in Montreal, Thursday, 12 May 1994

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS [UNITED TRANSPORTATION UNION]
DISPUTE:

Appeal of the discharge of yardperson V. Albert of MacMillan Yard.

JOINT STATEMENT OF ISSUE:

Effective 18 December 1992, V. Albert was discharged from Company service for conduct incompatible with employment in a safety sensitive position.

The Union appealed the discharge of the grievor as being unjustified based on the following grounds:

- (1) The grievor was improperly held out of service without compensation pending the outcome of the investigation.
- (2) The Company's decision to dismiss the grievor was not based on the charge of which he was proven guilty in a criminal court of law.
- (3) The grievor's discipline record does not sustain the Company's disciplinary response.
- (4) The grievor should have been afforded the provisions of the Rule "G" By-Pass Agreement in Appendix B of the Union/Management Agreement on the Control of Drug and/or Alcohol Abuse.

The Union's appeal included reinstatement and reimbursement for all time lost.

FOR THE UNION BROTHERHOOD:

(SGD.) W. G. SCARROW

GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) A. E. HEFT

for: VICE-PRESIDENT, GREAT LAKES REGION

There appeared on behalf of the Company:

A. E. Heft	_ Manager, Labor Relations, Toronto
C. Morgan	_ Labour Relations Officer, Toronto
D.K. House	_ Superintendent, S.O.D., Sarnia

And on behalf of the Union:

W. G. Scarrow	_ General Chairperson, Sarnia
K. Taylor	_ Local Chairperson, Toronto
G. Glidden	_ Witness, Toronto
K. Skinner	_ Witness, Toronto
V. Albert	_ Grievor

AWARD OF THE ARBITRATOR

In the case at hand the burden is upon the Company. Its discharge of the grievor is predicated on its view that he was involved in the production of marijuana for the purposes of trafficking. In the Arbitrator's view the evidence does not sustain that conclusion. At most, the evidence discloses that the grievor's involvement with marijuana, albeit a cause for concern, was in relation to his own possession of relatively limited quantities for his own use. There is no evidence that he possessed or consumed narcotics in violation of Rule G, when on duty or subject to duty. In all of the circumstances the Arbitrator is satisfied that the facts of the instant case fall generally within the principles discussed in **CROA 2209**, in relation to the off-duty possession or use of a prohibited drug.

Further mitigating factors include the grievor's subsequent efforts at rehabilitation, which have been successful. He followed a twenty-eight day in-patient treatment program at the Renascent Centre in Toronto, and has remained active in the activities of both Alcoholics Anonymous and Narcotics Anonymous since that time. In the circumstances, the Arbitrator is satisfied that this is an appropriate case for a reduction of penalty.

The grievor shall therefore be reinstated into his employment, without loss of seniority and without compensation for wages and benefits lost. Mr. Albert's reinstatement shall be conditional upon his providing to the Company, for a period of not less than two years from the date of his reinstatement, documentary evidence, on a quarterly basis, confirming his ongoing involvement in the activities of Alcoholics Anonymous and/or Narcotics Anonymous. For the same period of time he shall be subject to drug testing by the Company, which may be conducted randomly, but not abusively, to confirm his ongoing abstinence from drugs.