Canadian Railway Office of Arbitration
Case No. 2621
Heard in Calgary, Wednesday, 10 May 1995
concerning
Canadian Pacific Limited
and
Brotherhood of Maintenance of Way Employees
ex parte
Dispute:
Dismissal of Mr. P. Giroux.
Ex Parte Statement of Issue

On June 1, 1994, the grievor was dismissed for conduct unbecoming an employee. That was the result of the grievor having been charged with drug trafficking in Calgary on March 8, 1994.

The Brotherhood contends that: (1.) The discipline assessed was unwarranted and too severe in the circumstances; (2.) The Company is in violation of Section 18.8 and Appendix B-13 of Agreement No. 41

The Brotherhood requests that: The grievor be reinstated to his former position forthwith without loss of seniority and with full compensation for all wages and benefits lost as a result of this matter.

The Company denies the Brotherhood's contentions and declines the Brotherhood's requests.

for the Brotherhood:
(sgd.)John J. Kruk
System Federation General Chairman
There appeared on behalf of the Company:
R. Andrews – Labour Relations Officer, Vancouver
L. Guenther – Labour Relations Officer, Vancouver
R. Wedel – Manager, Engineering Maintenance - Alberta, Calgary
And on behalf of the Brotherhood:
P. Davidson – Counsel, Ottawa
D. McCracken– Federation General Chairman, Ottawa
H. Helfenbien – Local Chairman, Medicine Hat
P. Giroux – Grievor
award of the Arbitrator

The grievor, Machine Operator P.A. Giroux, was discharged following his removal from service upon being charged with trafficking in cocaine, contrary to the Narcotics Control Act, on March 4, 1994 at Calgary.

The evidence discloses that Mr. Giroux was laid off at the time of the criminal charge against him. Court records disclose that on the day in question he was a patron in an admittedly unsavoury hotel in Calgary, and was apparently sitting alone at a table when an undercover police officer, posing as a biker, asked him whether he had any cocaine. Mr. Giroux replied that he did not, but that he might know of someone who did. Mr. Giroux then left his table and went to another patron in the bar whom he believed might possess or have access to cocaine, and informed him of the interest expressed by the undercover officer. Insofar as the evidence discloses, the grievor had no further direct dealings with either the undercover police officer or the other patron who, it appears, did proceed to approach the police officer and sell him a quantity of cocaine. It appears that sometime later, as he was passing the undercover officer's table,

Mr. Giroux asked him whether he had “scored”, to which the police officer posing as a biker replied in the affirmative.

On the basis of the above incident Mr. Giroux was charged with trafficking in cocaine. At trial he was acquitted, upon a finding by the Court that the evidence did not establish that Mr. Giroux had any knowledge as to whether the patron who supplied the cocaine was in fact in possession of any at the time. The judge found that he could not conclude, beyond a reasonable doubt, that Mr. Giroux had knowledge that the person to whom he linked the undercover police officer had the capacity to supply cocaine or was prepared to so. On that basis he found him not guilty. Further, the evidence of the undercover police officer, reflected in the transcript of the court proceedings filed in evidence, confirms that he had no prior dealings with Mr. Giroux, whom he had seen often on previous occasions in the bar. While he described the grievor as “somewhat of a fixture” in the bar, he confirmed that he was not a suspect or target of the drug operation, and his involvement with the officer was limited to the single incident. The evidence further reveals that during the disciplinary investigation conducted by the Company the grievor consented to a Company drug test. The result of the drug screening test taken on April 22, 1994 was negative.

In the circumstances of this case the Arbitrator cannot entirely dismiss the argument of Counsel for the Brotherhood that the alleged involvement of the grievor in drug related activity, as disclosed in the evidence, was relatively peripheral, as compared to conduct reviewed in previous cases, where discharge was found to be justified. There are substantial contrasts between the case at hand and CROA 2296, for example, which involved the discharge of an employee found in possession of a substantial amount of prohibited narcotics, as well as scales and paraphernalia normally utilized in trafficking. Further, the evidence in the instant case discloses no possession of any narcotic by the grievor, nor any preplanned involvement as a “point man” or intermediary in a drug transaction, such as was disclosed in CROA 2090.

What the case does disclose is a serious error of judgment on the part of the grievor by effectively pointing one unsavoury character in search of narcotics in the direction of another unsavoury character who he had reason to believe might have access to some. Mr. Giroux explains that the patron who supplied the drugs to the police officer had approached him earlier in the bar, asking if he was interested in buying some cocaine, to which the grievor replied in the negative. In the circumstances, however, the Arbitrator cannot share the view of Counsel for the Brotherhood as to the degree of innocence attaching to the mistake in judgment exhibited by Mr. Giroux. He knowingly placed himself in a compromising position which resulted in serious drug charges being brought against him. In the circumstances, the Arbitrator is satisfied that the Company had reason to withdraw the grievor from service, and to assess discipline against him. Given that Mr. Giroux did not, however, either possess a narcotic or, as evidenced by his acquittal, traffic in it, I am satisfied that there is substantial reason to reconsider the penalty assessed, and that a suspension in substitution for his discharge is not inappropriate in the instant case. While the concerns which the Company had initially about the incident are

understandable, as the evidence of the police officer before the court reflects, the facts suggest that, although he obviously kept bad company and carelessly became involved in a compromising situation, the grievor has not been shown to be a participant in the possession, use or trafficking of narcotics.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment, forthwith, without compensation or benefits, and without loss of seniority. The time from his discharge to his reinstatement shall be recorded as a suspension against Mr. Giroux's record.

May 18, 1995(sgd.) MICHEL G. PICHER
ARBITRATOR