CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2632

Heard in Calgary, Thursday, 11 May 1995

concerning

Canadian National Railway Company

and

Canadian Council of Railway Operating Unions (United Transportation Union)

DISPUTE:

Appeal of the Company's decision to terminate the services of R.W. Haydock of Vancouver, B.C. effective July 18, 1994 for failure to successfully complete a medical examination including a drug test on July 12, 1994.

JOINT STATEMENT OF ISSUE:

On February 6, 1994, Mr. Haydock was discharged for accumulation of demerits. On June 16, 1994, the parties met in arbitration on three discipline cases which led to Mr. Haydock's discharge. The hearings were adjourned sine die at the request of the parties as recorded in CROA 2499, 2500 and 2501.

On June 20, 1994, a tri-party agreement was signed by the Company, the Union and Mr. Haydock agreeing to the reinstatement of Mr. Haydock under certain conditions. One of the conditions of reinstatement was the requirement that Mr. Haydock successfully complete a Company medical examination, including a drug test.

On July 18, 1994, the Company advised Mr. Haydock, in writing, that he failed to successfully complete the Company's medical examination. Therefore, because he failed to meet the agreed upon conditions of his reinstatement his services were considered terminated.

The Union appealed the Company's decision on October 4, 1994. The Company did not accept the Union's letter as a proper grievance under article 121.1(c) of agreement 4.3 because it was submitted beyond the time limits outlined in the collective agreement. The Company did advise the Union, however, that its decision regarding Mr. Haydock was unchanged form July 18, 1994.

The Union's position is that: (1.) The grievance on behalf of the grievor was properly submitted within the time limits of the collective agreement; (2.) Failing to pass a medical is not grounds for discharge, the grievor should have been given another opportunity to pass his medical; (3.) The Company did not comply with article 117 of the collective agreement.

The Company's position is that: (1.) The grievance is not arbitrable; (2.) In the alternative, should the Arbitrator determine that the grievance is arbitrable, the Company's decision regarding Mr. Haydock is proper account he failed to meet the conditions for reinstatement as set out in the letter of agreement dated June 20, 1994.

FOR THE Council: FOR THE COMPANY:

(SGD.) M. G. Eldridge (SGD.) B. Laidlaw

for: General Chairman For: Senior Vice-President, Western Canada

There appeared on behalf of the Company:

B. Laidlaw – Labour Relations Officer, Edmonton

E. C. Bruzzese – District Superintendent, Transportation, Kamloops

B. Ballingall – Human Resources Officer, Kamloops

And on behalf of the Council:

M. G. Eldridge – Vice-General Chairperson, Edmonton
C. S. Lewis – Secretary, G.C.A., Edmonton
R. W. Haydock – Grievor

AWARD OF THE ARBITRATOR

The Arbitrator cannot accept the submission of the Company with respect to the arbitrability of this matter on the basis of timeliness. In my view this is not a fresh grievance relating to a new event in the discharge of Mr. Haydock. Rather, what transpired was the failure of Mr. Haydock to meet a condition of his reinstatement contained in a memorandum of agreement signed by the Company, the Union and the employee, to resolve outstanding grievances in three matters previously brought before this Office (CROA 2499, 2500 and 2501). That memorandum of agreement contains, in part, the following conditions:

"Dear Mr. Armstrong:"

"This has reference to our conversations in Calgary, Alberta on June 16th wherein the parties agreed to reinstate Yard Foreman R.W. Haydock into Company's service under the following conditions:"

"a) Mr. Haydock will be required to successfully complete the Company's rule and medical examinations including a drug test, and will be compensated as outlined in addendum 62 of agreement 4.3 for rules training and article 125 for medical."

"b) Mr. Haydock will be required to attend and participate in a Company sponsored course of counselling for a period of up to two years, to be directed by the Company's Director of Occupational Health Services in conjunction with the Company's Employee Assistance Program. Such program to be paid for by the Company."

Unfortunately, as the record reflects, Mr. Haydock tested positive in the drug test which he took as part of the medical examination provided for in paragraph a) above. Based on the failure of that condition, the Company has declined to implement the reinstatement provided for in the settlement of June 20, 1994.

The Arbitrator can see no basis to interfere with that decision. To do so would be tantamount to disregarding or amending the conditions agreed to between the parties, as reflected in the settlement relating to Mr. Haydock's reinstatement. As a matter of general policy, such settlements should be encouraged. As reflected in Canadian arbitral jurisprudence, arbitrators do not interfere the terms of such settlements, as to do so would tend to discourage parties from resorting to them and, ultimately, undermine their utility as an important instrument for resolving disputes. For reasons which the parties best appreciate, they fashioned the terms and conditions which had to be met by Mr. Haydock as part of his reinstatement, and he failed to meet those terms. The Company was therefore entitled to deny him reinstatement, as agreed.

For all of the foregoing reasons the grievance must be dismissed.

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