

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2680

Heard in Montreal, Tuesday, 12 December 1995

concerning

ONTARIO NORTHLAND RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Dismissal of ESB W. Quevillon.

JOINT STATEMENT OF ISSUE:

Following an investigation held on December 5, 1994, ESB Wayne Quevillon was assessed 45 demerit marks for: "Willfully destroying property, including 25 damaged/destroyed food lockers, damaged surface of one kitchen table and the destruction of a cooking utensil at the Cochrane resthouse facility during the weekend of November 25, 26 and 27, 1994."

And subsequent to a following investigation on December 8, 1994, was assessed 40 demerit marks for: "Conducting yourself in a manner unbecoming an Ontario Northland employee while on duty and for failing to follow instructions to assist the driver of the Northlander replacement bus between Cochrane and North Bay, November 27, 1994."

When added to the 25 demerit marks he already had on his file, he accumulated 110 demerit marks. He was subsequently dismissed from service for accumulation of demerit marks in excess of 60.

The United Transportation Union contends that the penalty assessed Mr. Quevillon was unjust and a lesser penalty should be substituted. The incidents causing Mr. Quevillon's dismissal were brought on by alcoholism. The United Transportation Union requests that Mr. Quevillon be reinstated with the Company without any loss of seniority.

The Company denied the request.

FOR THE UNION:

(SGD.) K. L. MARSHALL
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. D. KNOX
DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

M. J. Restoule – Manager, Labour Relations, North Bay
J. Thibb – Superintendent, Train Operations, Englehart

And on behalf of the Union:

K. L. Marshall – General Chairman, North Bay
G. King – Legislative Representative, North Bay
W. Quevillon – Grievor

AWARD OF THE ARBITRATOR

The evidence before the Arbitrator discloses that the grievor did engage in the conduct alleged against him, and for which he was assessed demerits resulting in his dismissal from service for the accumulation of demerit marks. The sole issue before the Arbitrator is whether it is appropriate to substitute a lesser penalty.

The material tendered in evidence by the Union confirms that at the time of the incident in question the grievor suffered from alcoholism. He subsequently successfully completed a twenty-eight day in-patient treatment program at the St. Joseph's Treatment Centre and from that time to the present has successfully pursued after care treatment both at the St. Joseph's Treatment Centre and through regular attendance at meetings of Alcoholics Anonymous. The prognosis for his ongoing control of his condition is documented by expert opinion as being positive.

In the circumstances, the Arbitrator is satisfied that the Company did not have just cause to terminate Mr. Quevillon when it did. The Arbitrator is satisfied that the actions giving rise to his discharge, which can only be described as irrational, were substantially influenced by his medical condition as an alcoholic. Having regard to that mitigating circumstance, and the well-documented evidence of the grievor's recovery, I am satisfied that the exercise of the Arbitrator's discretion, under the provisions of the Canada Labour Relations Code, is justified in the circumstances.

The Arbitrator therefore directs that the grievor be reinstated into his employment forthwith, without compensation or benefits, and without loss of seniority. Mr. Quevillon's reinstatement shall be conditional upon his continuing to attend meetings of Alcoholics Anonymous, or a similar organization, on a regular basis for not less than two years from his reinstatement, with written confirmation of such attendance to be provided to the Company by an officer of that organization on a quarterly basis. During that two-year period Mr. Quevillon shall also be subject to random testing for alcohol consumption, to be administered by the Company in a non-abusive fashion.

December 15, 1995

(signed) MICHEL G. PICHER
ARBITRATOR