

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2683

Heard in Montreal, Tuesday, 12 December 1995

concerning

CANADIAN PACIFIC LIMITED

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION]**

DISPUTE:

The dismissal of Conductor M. Marshall of Medicine Hat, Alberta, for "conduct incompatible with your employment as evidenced by your involvement with the trafficking of narcotics (marijuana)"

JOINT STATEMENT OF ISSUE:

After the completion of a proper investigation conducted on December 13, 1993, the Company dismissed Conductor M. Marshall for the reasons outlined above.

The Council contends that the Company investigation failed to produce any facts to support the charge of involvement in trafficking in narcotics and has requested the grievor's reinstatement with full compensation for all time lost and without loss of seniority or benefits.

The Company has declined the Council's request and refuses to reinstate Mr. Marshall.

FOR THE COUNCIL:

(SGD.) L. O. SCHILLACI
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) K. JANSENS
GENERAL MANAGER, OPERATIONS & MAINTENANCE

There appeared on behalf of the Company:

L. Guenther – Labour Relations Officer, Vancouver

And on behalf of the Council:

L. O. Schillaci – General Chairperson, Calgary

L. Marshall – Grievor

AWARD OF THE ARBITRATOR

The evidence before the Arbitrator establishes that the grievor was not involved in what is generally understood to be trafficking in narcotics. At most, it can be said that in a social setting, at his home, he gave a very small quantity of marijuana to a person he believed to be a friend. The criminal charge of trafficking in marijuana, brought against the grievor as a result of the incident was in fact dismissed for want of prosecution.

The grievor is an employee of fourteen years' service. Although it is true that he was previously disciplined for involvement in the possession of marijuana, that incident also involved an extremely small quantity, in circumstances which are not work related. On the whole, the Arbitrator is compelled to agree with the Union's representative that the facts of the instant case disclose, at most, a casual involvement with marijuana in circumstances that are entirely non-work related (*see* CROA 2209). There is also before the Arbitrator a professional assessment by AADAC confirming that the grievor is not drug addicted or dependent.

In all of the circumstances the Arbitrator is satisfied that a substitution of penalty is appropriate in the case at hand. However, given the grievor's prior discipline for non-work related, casual use of marijuana this is not an appropriate case for compensation, and is a case in which conditions should be fashioned to protect the Company's legitimate interests. The Arbitrator therefore directs that the grievor be reinstated into his employment forthwith, without compensation or benefits, and without loss of seniority. His reinstatement is conditional upon his agreeing to be subject to random drug or alcohol testing, administered in a non-abusive fashion, for a period of not less than two years from the date of his reinstatement.

December 15, 1994

(signed) MICHEL G. PICHER
ARBITRATOR