

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2694

Heard in Montreal, Wednesday, 10 January 1996

concerning

**CANADIAN PACIFIC LIMITED**

and

**TRANSPORTATION COMMUNICATIONS UNION**

### **DISPUTE:**

The dismissal of Weston Storeperson Mr. Derrick Bailey, #538805.

### **JOINT STATEMENT OF ISSUE:**

On May 2, 1994, an investigation was held with Mr. D. Bailey in connection with the circumstances leading to his being held out of service on April 25, 1994.

As a result of the aforementioned investigation, Mr. Bailey was issued Form 104 on May 11, 1994, which stated that he had been "dismissed for being in possession of and consuming narcotics while on duty on April 25, 1994."

The Union submitted a grievance appealing Mr. Bailey's dismissal and further requested that, in view of his rehabilitation efforts, Mr. Bailey be returned to work with compensation.

The Union also views that Mr. Bailey's dismissal has not been substantiated and was excessive.

The Company declined the Union's grievance.

### **FOR THE UNION:**

**(SGD.) D. JAMES KENT**  
DIVISIONAL VICE-PRESIDENT

### **FOR THE COMPANY:**

**(SGD.) C. GRAHAM**  
FOR: DIRECTOR, MATERIAL MANAGEMENT – OPERATIONS

There appeared on behalf of the Company:

C. Graham	– Labour Relations Officer, Montreal
D. David	– Labour Relations Officer, Montreal

And on behalf of the Union:

H. Daniher	– Executive Vice-President, Thunder Bay
R. Pagé	– Executive Vice-President, Montreal
N. Lapointe	– Assistant Divisional Vice-President, Montreal

## **AWARD OF THE ARBITRATOR**

It is not disputed that Storeperson Bailey was involved in the consumption of cannabis while on duty on April 25, 1994. He was one of three employees so involved, in an incident whose facts are related in **CROA 2671**, and which do not bear repeating here.

The sole issue before the Arbitrator is the appropriate penalty in the case of Mr. Bailey, and whether the Arbitrator's discretion should be exercised to direct a reduction of penalty. In the instant case there are substantial mitigating factors to consider. The material before the Arbitrator confirms that following his discharge Mr. Bailey sought medical assistance with what he viewed as his own personal drug problem. He was duly assessed by the Addictions Foundation of Manitoba and was found to be drug dependent, and in need of treatment, commencing in May of 1994. The record confirms that the grievor participated in and successfully completed the non-residential, ten week program of the Addictions Foundation of Manitoba. Significantly, thereafter he faithfully involved himself in the activities of Narcotics Anonymous. The record confirms his frequent, regular attendance at meetings of that group, several times a week, from the time of his release from his initial treatment program to the present day.

In the Arbitrator's view, it is important to appreciate that drug dependence, of the kind which afflicted Mr. Bailey, is an illness and must be treated as such. This Office has long recognized that where an alcoholic or drug dependent employee has successfully followed a program of rehabilitation, the details of which are professionally documented, so as to support a prognosis of continued success in the event of his or her return to work, grounds may be established for the Arbitrator to exercise his discretion to reduce the penalty to something less than discharge.

In the Arbitrator's view this is an appropriate case for the exercise of that discretion. As noted above, the grievor has demonstrated a serious and successful effort at gaining control of his drug dependence. Moreover, his prior disciplinary record is supportive of his re-employment. It does not appear disputed that Mr. Bailey was never once disciplined during the entire course of his thirteen years' employment with the Company. In all of these circumstances the Arbitrator is satisfied that this is an appropriate case for a substitution of penalty.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment, without compensation or benefits, and without loss of seniority. Mr. Bailey's reinstatement shall be conditioned upon his remaining free from the consumption of any narcotic, and his ongoing participation, for a period of not less than two years, in the activities of Narcotics Anonymous, such participation to be documented to the Company by a responsible officer of that organization on a quarterly basis. For the same period the grievor shall be subject to random drug testing by the Company, to be administered in a non-abusive fashion. Failure of these conditions shall be grounds for the nullifying of Mr. Bailey's reinstatement.

January 12, 1996

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**