

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2695

Heard in Montreal, Wednesday, 10 January 1996

concerning

CANADIAN PACIFIC LIMITED

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The dismissal of Weston Storeperson Mr. Bruce Middleton, #546900.

JOINT STATEMENT OF ISSUE:

On May 2, 1994, an investigation was held with Mr. B. Middleton 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. Middleton was issued Form 104 on May 11, 1994, which stated that he had been "dismissed for consuming narcotics while on duty on April 25, 1994."

The Union submitted a grievance appealing Mr. Middleton's dismissal and requested that he be reinstated with full seniority, wages and benefits.

The Union also views that Mr. Middleton'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

The grievor was discharged for admittedly consuming narcotics, in the form of cannabis, while on duty on April 25, 1994. The facts relating to the incident are reviewed in **CROA 2671**, which concerns the discharge of another employee involved in the same incident. The evidence before the Arbitrator confirms that the grievor and two other employees were discovered in a scale shack, some distance from their work place in the Weston Shops Stores. They had admittedly been smoking cannabis, and a pouch found on the premises, which belonged to Mr. Middleton, contained a relatively extensive array of narcotics paraphernalia. One of the employees involved in the incident, Mr. D. Bailey, was a drug dependent individual whose circumstances, and eventual conditional reinstatement following an extensive rehabilitation program, are related in **CROA 2694**. However, there is nothing in the material before the Arbitrator to suggest that Mr. Middleton suffered from drug dependence at the time of the incident. In his case, it cannot be denied that he freely and knowingly consumed a narcotic, at the workplace, during his tour of duty, notwithstanding that he is employed in a safety sensitive position, being periodically required to operate a forklift truck within the Stores' area.

This Office has long recognized the distinction between an employee who consumes alcohol or drugs in the work place, where that employee is alcoholic or drug-dependent, as distinguished from the case where the employee does not suffer from such an affliction. In **CROA 1954**, a case which involved the consumption of alcoholic beverages by a brakeman subject to duty, it was found that a non-alcoholic employee could not claim the mitigating consideration extended to another employee who, it was not disputed, suffered from alcoholism. In that award the following comments appear:

There are no compelling mitigating circumstances in the instant case. The grievor is a brakeman of fairly short service, although it appears that he is also qualified as a conductor. On September 7, 1987, he knowingly consumed alcoholic beverages over a fairly sustained period of time when he had reason to expect that he would be headend brakeman on a southbound train from MacTier to Toronto later that evening or early the next morning. Neither the length of the grievor's service nor his prior disciplinary record weigh greatly in mitigation of that serious infraction.

The Union submits that the reinstatement of Engineer Trainee Reid should be taken into account in assessing the appropriate discipline in the case of Mr. Plunkett. With that the Arbitrator cannot agree. It is common ground that Mr. Reid is an alcoholic. Alcoholism has long been viewed by Arbitrators in Canada as an illness which limits a person's ability to resist the compulsion to drink, thereby resulting in the commission of disciplinary infractions by the alcoholic employee. The compassionate treatment of alcoholics for various kinds of infractions, including drinking infractions, must be understood in that context. To the extent that an alcoholic's actions can be linked to the impairment of responsibility occasioned by his or her medical condition, and the evidence discloses a substantial rehabilitation with a documented prognosis for the ongoing control of that condition, valid grounds for mitigating against a harsh disciplinary penalty are established. The same cannot not be said of a non-alcoholic who knowingly violates prohibitions against drinking while on duty or subject duty. There is a significant difference in respect of the responsibility of such an individual given his or her capacity to make clear choices. There is no sound basis, therefore, to accept the suggestion that it is somehow unfair or discriminatory to not grant to non-alcoholics the same consideration in mitigation as is shown to those who suffer from that unfortunate condition.

In the Arbitrator's view the foregoing comments are apposite as they relate to the distinction in treatment to be accorded to Mr. Middleton, as compared with Mr. Bailey. The use of a narcotic in the workplace by an employee in a safety-sensitive position is an extremely serious offence. In considering the appropriate measure of discipline regard must be had not only to the gravity of the infraction, but to the need for the employer to deter similar conduct by other employees. As noted, this is not a case where Mr. Middleton can plead a medical condition or disability in mitigation of his actions. In all of the circumstances the Arbitrator is satisfied that the grievance must, therefore, be dismissed.

January 12, 1996

(signed) MICHEL G. PICHER
ARBITRATOR