

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2992

Heard in Montreal, Thursday, 16 October 1998

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Dismissal of Mr. P. Michaud.

EX PARTE STATEMENT OF ISSUE:

On February 22, 1996, the grievor was dismissed by the Company for an alleged Rule "G" violation.

The Brotherhood grieved.

The Union contends that: **1.)** The Company's allegation of Rule "G" is unsupported from an evidentiary point of view. Therefore, the grievance must be allowed; **2.)** In the alternative, the discipline assessed was unwarranted and excessive in the circumstances.

The Union requests that the grievor be reinstated immediately without loss of seniority and with full compensation for all losses incurred as a result of this matter.

The Company denies the Union's contentions and declines the Union's request.

FOR THE BROTHERHOOD:

(SGD.) R.A BOWDEN

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. A. Watson	– Consultant, Labour Relations, Montreal
D. Fisher	– Director, Labour Relations, Montreal
G. Roberge	– Foreman, Joffre Work Equipment Shop
R. Savard	– Foreman, Joffre Work Equipment Shop
P. Breton	– Superintendent, Joffre Work Equipment Shop

And on behalf of the Brotherhood:

R. A. Bowden	– Eastern System Federation General Chairman, Ottawa
D. Brown	– Sr. Counsel, Ottawa
P. Davidson	– Counsel, Ottawa
P. Michaud	– Grievor

AWARD OF THE ARBITRATOR

The first issue to be resolved in this grievance is whether the grievor did, in fact, violate CROR Rule G as alleged. The rule reads, in part, as follows:

G (a) The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited.

Previous decisions of this Office have concluded that an employee is taken to have used alcohol while subject to duty if, on the facts disclosed, he or she comes to work having consumed alcohol, and still under the influence thereof. (See **CROA 557**)

In the instant case the Arbitrator is satisfied, on the balance of probabilities, that Mr. Michaud did suffer the physical effects of prior alcohol consumption when he attended work on the morning of February 5, 1996. He was then observed by two supervisors as having a flushed face, glassy eyes and trembling hands. While there is some conflict as to whether there was a smell of alcohol on his breath, by the grievor's own acknowledgement, in a subsequent statement, he had suffered a "relapse" of his condition of chronic alcoholism at or about the time of the incident. I do not consider it necessary to determine, for the purposes of this grievance, whether the grievor was in fact intoxicated, or whether his unstable physical condition was induced by the effects of alcohol withdrawal. In either event, I am satisfied that his physical state did render him unfit for duty, by reason of alcohol consumption. A violation of Rule G is therefore made out.

The issue of substance is the appropriate measure of discipline in the circumstances. It is not disputed that the grievor is an alcoholic of long-standing. As an employee in a safety sensitive position, occupying the position of Mechanic "A", he is subject to the CROR, and is under a particular obligation to work free of the effects of intoxicants. The record discloses that over the years the grievor has made efforts in that regard. It appears that while employed by the Company in New Brunswick, in or about 1991, Mr. Michaud sought and obtained assistance from the Company's EFAP program. The documentation before the Arbitrator confirms that Mr. Michaud was hospitalized from February 19, 1991 to March 1, 1991 following an incident during which he blacked out and suffered convulsions while at work. The attending physician, Dr. Michel Landry states, in his report, that the grievor's condition was caused by alcohol withdrawal. It appears to be common ground that on that occasion the grievor was given a leave of absence for the medical treatment which he received, and was accorded a similar leave of absence subsequently, between June 17 and August 5, 1991.

Mr. Michaud is an employee of some twenty years' service, who was hired by the Company in February of 1977. He has had a positive disciplinary record, having been disciplined on only two occasions in his career with the Company. Significantly, the material before the Arbitrator confirms that following his discharge in 1996 the grievor followed an intensive in-patient treatment program in L'Aube de la Paix rehabilitation centre in Thetford Mines. His initial treatment involved a one month in-patient program in October of 1997, followed by a further eleven day program in February of 1998. The grievor's account, which the Arbitrator accepts, is that he has remained free of alcohol consumption, and participates on an almost daily basis in the activities of Alcoholics Anonymous.

In the Arbitrator's view, bearing in mind the duty of reasonable accommodation which attaches to a person suffering from a disability such as alcoholism, it is appropriate in the circumstances of this case to order a substitution of penalty, in terms fashioned to protect the legitimate interests of the Company. The Arbitrator therefore directs that the grievor be reinstated into his employment forthwith, without compensation and without loss of seniority. For the period of two years following his reinstatement the grievor shall participate in the activities of Alcoholics Anonymous on a regular basis, or in the activities of a similar organization as agreed by the parties, with quarterly reports from an officer of Alcoholics Anonymous, or such other organization as may be agreed, to be provided to the Company to confirm the grievor's ongoing participation. The grievor shall abstain entirely from the consumption of alcohol, and shall be subject to periodic random testing for alcohol consumption, to be administered on a non-abusive basis, at the discretion of the Company for the duration of the two-year period. Failure to comply with these terms of reinstatement shall render to grievor liable to discharge.

October 19, 1998

(signed) MICHEL G. PICHER
ARBITRATOR