

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2996

Heard in Calgary, Tuesday 10 November 1998

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)**

DISPUTE:

The dismissal of Locomotive Engineer M.P. Marshall, Medicine Hat, AB.

JOINT STATEMENT OF ISSUE:

Following an investigation conducted on January 23, 1998, in connection with "failing to meet the requirements of CROA case number 2683 dated December 15, 1995, by testing positive for THC (Cannabis)", Locomotive Engineer Marshall was dismissed for:

"failing to remain abstinent from the use of illicit drugs as evidenced by your having tested positive for THC (cannabis) in a Company-sponsored random drug test, and for your failure to comply with the provisions of your reinstatement as outlined in CROA Award 2683."

On January 8, 1998, the Company required Locomotive Engineer Marshall to submit to a drug test as permitted by the conditions of reinstatement outlined in CROA award 2683. The results of this test were positive for THC. Two hours and fifteen minutes following the Company test, Locomotive Engineer Marshall submitted to a second test, the results of which were negative for THC.

The Council contends that Locomotive Engineer Marshall should not have been dismissed without definitively establishing that he had THC in his system. As indicated in the investigative record, Mr. Marshall was prepared to submit to another test or even continue further random drug testing to prove his innocence.

The Council requested that Mr. Marshall be reinstated into Company service without loss of seniority or benefits and that he be fully compensated for lost wages while out of service.

The Company contends that the supervised test it administered definitively established that Locomotive Engineer Marshall had THC in his system and has declined the Council's request for reinstatement.

FOR THE COUNCIL:

(SGD.) D. C. CURTIS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) K. E. WEBB
FOR: DISTRICT GENERAL MANAGER, PRAIRIE DISTRICT

There appeared on behalf of the Company:

K. E. Webb	- Manager, Labour Relations, Calgary
M. E. Keiran	- Director Labour Relations, Calgary
Dr. B. Kurtzer	- Witness
P. Wilson B.Sc.	- Witness
P. Blasetti	- Witness

And on behalf of the Council:

J. Flegel	- Senior Vice-General Chairman, Saskatoon
D. C. Curtis	- General Chairman, Calgary

T. G. Hucker	– Vice-President, Ottawa
D. Able	– Local Chairman, Medicine Hat
M. P. Marshall	– Grievor

At the request of the Council, the hearing was adjourned by the Arbitrator By letter dated November 16, 1998 the Council requested that the Arbitrator render his decision based on the parties' submission at the hearing.

AWARD OF THE ARBITRATOR

The employment of the grievor, Mr. M.P. Marshall of Medicine Hat was conditional upon terms imposed by this Office following his reinstatement into employment in CROA 2683. As reflected in that award, the grievor was twice disciplined for involvement in the possession of marijuana. As a condition of reinstatement the award reads, in part, as follows:

... 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.

It is common ground that on January 8, 1998 the grievor submitted to a drug screening test in furtherance of the foregoing award, and that the test was positive for cannabis. At the arbitration hearing the Company had in attendance the medical and technical personnel who could give evidence with respect to the collection, custody, testing and analysis of the urine sample provided by the grievor.

It appears that following the drug test administered by the Company Mr. Marshall proceeded independently to have a separate drug test taken. The Council submits that the result of that drug test was negative. In the result, however, it would appear that the evidence with respect to the integrity of the collection process for that test would not, on the balance of probabilities, yield a degree of certainty comparable to that which would be established by the Company's test.

Upon a review of the record the Arbitrator is also satisfied that the collection method used by the Company's contracted service was in all respects proper, even though there may have been a slight variance in the timing the grievor co-signing a label applied to the sample jar, as compared with the routine followed in earlier tests. I am satisfied that there is nothing in that difference which materially impacts the reliability of the test or test results obtained by the Company. In the result, the Arbitrator concludes that the grievor did test positive for cannabis, plainly in violation of the terms of the arbitrator's award in **CROA 2683**. Given the prior record of his involvement with marijuana, I am also satisfied that it is appropriate to sustain the Company's decision to terminate the grievor's employment.

For these reasons the grievance must be dismissed.

November 27, 1998

(signed) MICHEL G. PICHER
ARBITRATOR