

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3264

Heard in Calgary, Thursday, 16 May 2002

concerning

CANADIAN PACIFIC RAILWAY

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
(RAIL CANADA TRAFFIC CONTROLLERS)**

DISPUTE:

Claim for all lost wages for RTC R.G. Bisson from April 16, 2001 to May 10, 2001 as per article 35.03.01.

JOINT STATEMENT OF ISSUE:

On March 30, 2001, while Rail Traffic Controller R.G. Bisson was on annual vacation the Calgary City Police executed a search warrant at his house. RTC Bisson claims that his roommate was the only person named as the subject of the search warrant and was subsequently charged with improper storage of weapons and possession of a controlled substance. Mr. Bisson further claims that the Calgary City Police contacted him on April 2, 2001 and advised him that he would also be charged, as the house was owned by him.

On April 4th, 2001, while still on annual vacation, he phoned Mr. Rick Wilson, General Manager of the Network Management Centre, to advise him of the charges laid against him. In his conversation with Mr. Wilson, RTC Bisson claimed that the possession of a controlled substance charge had nothing to do with him and he advised Mr. Wilson that he was in Winnipeg visiting his children at the time the search warrant was executed.

On April 5th, 2001, while still on annual vacation, RTC Bisson attended the Calgary NMC and advised Management of these charges and stated that the possession of a controlled substance charges had nothing to do with him and that he had been advised by the Calgary City Police that he was only being charged because he was the owner of the house. At this time and during a subsequent meeting that took place on April 6th, 2001, RTC Bisson was asked to submit to a voluntary drug test. RTC Bisson declined to submit to a voluntary drug test on both occasions.

On April 11, 2001 the Company commenced a formal investigation with RTC R.G. Bisson. At this time, RTC Bisson was offered a third opportunity to submit to a drug test which he again declined.

On April 26, 2001 RTC Bisson completed an assessment, was then cleared to return to work by the Company's Medical Department and returned to work on May 10, 2001.

The Union has advanced a grievance stating that the Company has violated RTC Bisson's human rights and also violated article 35.03.01 by not paying RTC Bisson's wages while held out of service and stated that the Company must pay RTC Bisson for all lost time wages.

The Company has denied the grievance stating that RTC Bisson was not held out of service under the provisions of article 35.03.01 as alleged by the Union, rather he was withheld from service as a result of the Company's legitimate medical concerns surrounding his fitness to work in a safety sensitive critical position.

FOR THE BROTHERHOOD:

(SGD.) J. RUDDICK
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) L. D. WORMSBECKER
FOR: DIRECTOR, NMC OPERATIONS

There appeared on behalf of the Company:

J. Worrall	– Labour Relations Officer, Calgary
K. Fleming	– Legal Counsel, Calgary
R. Smith	– Manager, CMC, Calgary
S. Seeney	– Manager, Labour Relations, Calgary
R. Sabourin	– Labour Relations Officer, Calgary

And on behalf of the Brotherhood:

M. D. McGown, Q.C.	– Legal Counsel, Calgary
D. Irvine	– Legal Counsel, Calgary
D. Arnold	– Special Representative, Calgary
D. J. Essery	– Local Chairman,
R. G. Bisson	– Grievor

AWARD OF THE ARBITRATOR

For the reasons given in **CROA 3263**, the grievance is dismissed.

May 27, 2002

(signed) MICHEL G. PICHER
ARBITRATOR