

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3336**

Heard in Montreal, Wednesday, 14 May 2003

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**BROTHERHOOD OF MAINTENANCE EMPLOYEES
EX PARTE**

DISPUTE:

Dismissal of Mr. G. Rivet.

BROTHERHOOD'S STATEMENT OF ISSUE:

By way of Form 104 dated July 22, 2002, the grievor was dismissed from Company service for his alleged "conduct unbecoming an employee as evidences by your possession of illegal drugs and admitted use of drugs on Company property a violation of Rule 1.8 of the Algoma Track Program Hotel and Camp Rules at Jackfish, Ontario, May 16, 2002. In response, a grievance was filed.

The Union contends that: **(1.)** The grievor is a long service employee with an otherwise perfect discipline record; **(2.)** The grievor should properly have been extended deferred discipline; **(3.)** The discipline assessed was excessive and unwarranted in the circumstances.

The Union requests that the grievor be reinstated into Company service forthwith without loss of seniority and with full compensation for all wages and benefits lost as a result of this matter.

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

FOR THE BROTHERHOOD:

(SGD.) J. J. KRUK

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

Ron Hampel - Labour Relations Officer, Calgary
E. MacIsaac - Manager, Labour Relations, Calgary

And on behalf of the Brotherhood:

J. J. Kruuk - System Federation General Chairman, Ottawa
D. W. Brown - General Counsel, Ottawa
P. Davidson - Counsel, Ottawa
R. Tirrelli - General Chairman, Montreal

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor possessed and consumed marijuana while living in boarding car accommodation at Jackfish, Ontario. A search of the boarding cars on May 16, 2002 by the Ontario Provincial Police revealed a ten gram bag of marijuana inside the grievor's locker or cabinet. It is not disputed that subsequently Mr. Rivet was charged with the possession of a small amount of marijuana and pleaded guilty to that charge on July 31, 2002.

A review of the record of the disciplinary investigation confirms that there was no attempt at concealment on the part of Mr. Rivet concerning his possession and use of marijuana. He explained that he had a small quantity of marijuana for his own personal use, and did not provide any to other employees. He further related that he limited his consumption to after work hours as a means of relieving stress. According to his account, which is not substantially challenged, several months previous his wife had left him, taking their two children. Following that event he developed the practice of occasionally consuming small amounts of marijuana while at remote work sites, after work.

The evidence further confirms that following his discharge, pursuant to a conversation which he had with Company officer Ian Robb who familiarized Mr. Rivet with the EFAP program sometime prior to the culminating events, on April 16, 2002, Mr. Rivet sought counselling assistance to deal with his consumption of marijuana. Documentary evidence presented to the Arbitrator confirms that he entered the care of the Centre Jellinek at Fort-Coulonge, Quebec and followed out-patient counselling between May and September of 2002. The written report of therapist Nicole Chaput confirms that some years previous the grievor had experienced a problem with alcohol consumption, and that he had succeeded in remaining free of alcohol since 1992. She further confirms that he has responded in like manner to the therapy which he received through the Centre Jellinek and has remained abstinent from drug use.

The only issue in this grievance is the appropriate disciplinary result. The Arbitrator agrees with the Company's representatives that the possession and use of alcohol or other intoxicants, including marijuana, on Company premises is a serious offence which is, *prima facie*, deserving of the most serious degree of discipline, up to and including discharge. That was clearly confirmed by the decision of this Office in **CROA 2994**. It is trite to say, however, that each case must nevertheless be considered on its own specific facts. It would appear to the Arbitrator that there are distinguishing features between the case at hand and the evidence disclosed in **CROA 2994** where the employee, whose discharge for consuming marijuana at a boarding car facility was upheld, was entirely uncooperative with the Company's effort at investigating his misconduct.

In the case at hand there are substantial mitigating factors which come to bear. Firstly, Mr. Rivet is an employee of more than twenty years' service. Remarkably, during that time he has never once been subject to any form of discipline. Additionally, as noted above, the grievor's admittedly ill-advised use of small quantities of marijuana after working hours at a remote boarding car location appears to have evolved as a means of dealing with stress arising from problems in his personal life. Following his termination he took serious steps to resolve his personal emotional difficulties and, through therapy, to end his involvement with the use of marijuana, as confirmed in the documentation provided to the Arbitrator. In these circumstances I am persuaded it is appropriate to consider a reduction of penalty, subject to conditions fashioned to protect the Company's legitimate interests.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for wages and benefits lost, and without loss of seniority. Mr. Rivet's reinstatement shall be conditional upon his accepting to be subject to periodic unannounced alcohol and drug testing, to be administered in a non-abusive fashion, for a period of not less than two years following the date of his reinstatement. Should Mr. Rivet refuse to undergo such a test, or should he test positive for alcohol or narcotics, he shall be subject to immediate termination.

May 16, 2003

MICHEL G. PICHER
ARBITRATOR