

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 26

Heard at Montreal, Monday, February 14th, 1966

concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

EX PARTE

DISPUTE:

The dismissal of ex-conductor P. Verreault June 9, 1961.

There appeared on behalf of the Company:

J. A. Little – General Manager, Sept-Îles
A. Bybee – Superintendent, Sept-Îles

And on behalf of the Brotherhood:

P. LaRochelle – General Chairman, Quebec

AWARD OF THE ARBITRATOR

This matter concerns the dismissal by the Company of P. Verreault, a trainman, on June 3, 1961, for his alleged refusal to “dead-head” on a motor car from Sept-Îles to Mile 16 when ordered.

The right to bring this matter to arbitration under the provisions of the agreement governing the Canadian Railway Office of Arbitration has been consistently opposed by the Company officials since the first request to do so was made.

The Office of Arbitration was notified by Mr. LaRochelle that the Railway had refused to enter into the preparation of a Joint Statement of Issue and requested the right to submit an ex parte presentation. This request was granted, such to a determination first of the arbitrability of the claim before a hearing as to its merits.

The Arbitrator was presented with a complete review by Mr. LaRochelle of the history of this claim. There was no dispute that the prescribed procedure had been followed by the grievor leading, because of the Company's refusal to reinstate him, to a submission to the then existing Canadian Railway Board of Adjustment. However, by a letter dated May 8, 1963, the Company was notified by Mr. C. G. Sweezy, General Chairman of Lodge 1093, Sept-Îles, as follows:

Please be advised that the Brotherhood of Railroad Trainmen's claim for the reinstatement of ex trainman P. Verreault through the Board of Adjustment No. 1 is withdrawn.

Please accept my thanks for the cooperation extended by management on this case.

In March, 1961, the Company had been advised that at a regular meeting of the Brotherhood of Railroad Trainmen, Lodge No. 1093 Sept-Îles, with the authorization of the Grand Lodge, a local general committee had been elected to represent all members of the organization and that Mr. C.G. Sweezy had been elected Chairman of the Local Committee. He occupied that office at the time the above letter was delivered.

LaRochelle outlined to the Arbitrator the steps taken by the grievor following the action of the local general committee in withdrawing his claim. First, he exercised his right under the Brotherhood's Constitution to appeal that decision to the President of the Lodge. With that official's approval he then pursued his appeal to the Board of Appeals of the Brotherhood. That body dealt with his appeal in February, 1964, and his appeal was sustained. The decision included the request that "... The Board is of the opinion that every effort should be made to re-instate the member involved."

In pursuance of that suggestion Mr LaRochelle approached the Company in a further effort to have its decision reviewed and a reinstatement effected. The result of that effort is shown in a letter from the General Manager of the Railway, under date of February 9, 1965, reading in part:

This letter will confirm the statement made verbally in the course of our meeting on January 11, 1965, to the effect that we are not prepared to join in any application for arbitration in the matter.

In the meantime, the Canadian Railway Office of Arbitration became operative and the application outlined was made.

Mr. LaRochelle could point to no provision in the agreement current at the time of this withdrawal, indicating recognition of an employee's rights under the Constitution of the Brotherhood.

For the Company Mr. Little maintained no suggestion was now being offered that Mr. Sweezy was not officially authorized to take the action he did in withdrawing the claim. Nothing in the agreement permits reinstatement. Therefore, the Arbitrator would have no jurisdiction to read into its terms such an unusual procedural right.

Upon a study of the terms of the collective agreement, I must hold the Company's position is well taken. What followed the withdrawal is a matter between the member and the Brotherhood. There is nothing in the agreement contemplating when in a case such as this, those officially designated to act for a claimant notify the Company that a matter is being withdrawn from further processing under the grievance procedure, that certain provisions in the Constitution of the Brotherhood should have any contractual significance between the Company and its employees.

Mr. Sweezy, carrying out the wishes of the Local Committee, withdrew this claim. The withdrawal contained no qualification that should the employee exercise his rights to appeal the action of the local committee and should such an application be successful, the grievance would again be offered for processing. It was an unqualified withdrawal and, in my opinion, must remain so.

For these reasons I find there is no jurisdiction to proceed with a hearing on the merits. The application is dismissed.

(signed) J. A. HANRAHAN
ARBITRATOR