

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 169

Heard at Montreal, Tuesday, September 9th, 1969

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**CANADIAN BROTHERHOOD OF RAILWAY,  
TRANSPORT & GENERAL WORKERS**

### **DISPUTE:**

When Mr. J.C. Hickman failed to report for duty on September 22, 1967, after being ordered to do so, the Company closed his records as "Resigned without notice". The Brotherhood claims that Mr. Hickman was unjustly discharged.

### **JOINT STATEMENT OF ISSUE:**

Mr. Hickman was employed as a Fireman on the M.V. Patrick Morris working a tour of duty from the 1st to the 15th of each month. He came off duty on July 15th, 1967 and was scheduled to report back to the ship on August 1st, 1967. He failed to do so and on August 29th, 1967 was assessed 20 demerit marks as discipline for failing to report for duty. He did not report for duty on September 1st and on September 21st he was instructed to report as a Fireman on board the "Patrick Morris". When he failed to report or give a reason for not doing so the Company showed him as resigned without notice in accordance with Article 37.5 of the Agreement. The Union protested this action in October 1968 on the basis that Article 37.5 did not apply. The complaint has been progressed through the various steps of the Grievance Procedure.

### **FOR THE EMPLOYEES:**

**(SGD.) J. A. PELLETIER**  
**EXECUTIVE VICE-PRESIDENT**

### **FOR THE COMPANY:**

**(SGD.) K. L. CRUMP**  
**ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

W. S. Hodges                   – Labour Relations Assistant, Montreal  
L. V. Collard                   – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

J. A. Pelletier                 – Executive Vice-President, Montreal  
L. K. Abbott                   – Regional Vice-President, Moncton

### **AWARD OF THE ARBITRATOR**

At the material times the M.V. Patrick Morris was operating between North Sydney, N.S., and Port aux Basques, Newfoundland. Crews worked on a schedule of twelve hours per day for fifteen days per month. Mr. Hickman's normal assignment was from the 1st to the 15th of each month. He failed to report for duty for his regular shift on August 1, 1967. As a result of this, he was, following investigation, assessed with 20 demerit marks, and the company's form No. 780, recording the discipline, was sent to him on August 30, 1967. He again failed to report for work on September 1. No discipline seems to have been imposed specifically for this offence, and the company sought to use Mr. Hickman for the second half of that month. Efforts to contact him were unsuccessful until September 21, on which day he was instructed to report for work. It would appear that, because of the shortness of notice, this was amended to require him to report on September 22. Mr. Hickman failed to report, and there does not appear to have been advanced any reason for his failure to do so.

Article 37 of the collective agreement provides as follows:

#### **37 Reporting on Board**

- 37.1** All crew members off watch shall be required to report on board and be available for duty not less than one hour before time of sailing, as posted on notice board.
- 37.2** Employees leaving vessel after completing tour of duty will be required to leave a contacting address with their officer in charge and the Marine Superintendent's office at St. John's. Employees will be notified when they are to report back on board.
- 37.3** Employees unable to report back on board vessel on the date required to do so due to illness or other bona fide reasons must notify the Marine Superintendent's office forty-eight hours before date required to join vessel.
- 37.4** Employees unable to rejoin vessel for bona fide reasons must notify the Marine Superintendent's office when they are available for duty. Such employees will be instructed when and where to report. Employees who have been absent on account of illness will be required to Produce a doctor's certificate before being permitted to resume duty.
- 37.5** Employees who fail to carry out the provisions of Article 37.3 or fail to report for duty at the time and place ordered without just reason will be considered as having resigned without notice.

It is the company's contention that Mr. Hickman, having failed to report for duty at the time and place ordered, and without giving any reason, was properly considered as having resigned without notice. The issue before me is simply whether this contention is correct. Subsequent matters, such as those commencing with the enquiry as to his status made by Mr. Hickman in February, 1968, are immaterial to the question before me.

In my view, Mr Hickman's case is clearly within the scope of Article 37. Mr. Hickman had already failed to report on a number of occasions. On the last occasion, he was required to report, but failed to do so and gave no notice of his inability or explanation for his failure. It was argued for the union that Article 37 did not apply, because it deals only with those on regular shifts, who for one reason or another are off shift. I am unable to accept this argument. Article 37.1 deals with crew members "off watch", but the other provisions of Article 37 deal with persons like the grievor, who have completed a "tour of duty", and who are expected to report back for another tour at some fixed time. The grievor's position was that of an employee subject to 15-day tours of duty. At the time in question, he had failed to report at the commencement of three such tours, and then failed to report as ordered in the course of a tour. In my view, it would be wrong to say that he was laid off: he was subject to a schedule of 15-day tours, and the layover period between these was not a period of layoff, properly speaking, but was simply an incident of his schedule. Indeed his absence in September was contrary to the wishes of the company. For these reasons, I cannot accept the further argument of the union that the grievor was laid off and entitled to notice of recall pursuant to Article 6.3. Although it was later so described in the company's correspondence the direction given to Mr. Hickman to report for work was not in fact a recall from layoff. By Article 6.3, a person receiving notice of recall from layoff has ten days in which to report for duty. This provision clearly had no application in the grievor's case.

For the foregoing reasons it is my conclusion that the grievor was properly dealt with under Article 37.5. Accordingly, the grievance must be dismissed.

**(signed) J. F. W. WEATHERILL**  
**ARBITRATOR**