

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1148

Heard at Montreal, Wednesday, November 16, 1983

Concerning

ONTARIO NORTHLAND RAILWAY

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

EX PARTE

DISPUTE:

Alleged violation of article 2.3 of the collective agreement whereby a second six month Leave of Absence was granted W. Osmar, Telecommunications Maintainer, without concurrence of the General Chairman, thereby resulting in the total loss of seniority rights as a Telecommunications Maintainer with the Ontario Northland Railway.

EMPLOYEES' STATEMENT OF ISSUE:

(1) On or about May 25, 1982 W. Osmar had his driver's privileges suspended for a three year term in Provincial Court. The Company insisted he apply for a six month Leave of Absence during which time they would re-evaluate his situation with thought given to returning him to his normal position.

(2) Past history shows individual may have an alcohol problem. Company has an Employee Assistance Program which was not and has not been implemented.

(3) Article 6.6 of the collective agreement provides for Exchange of Tricks for short periods of time when justified but only with approval of the Supervisor, this was implemented and then reversed.

Mr. Osmar was unjustly placed on the Construction Line gang thus losing his seniority rights. The Union has appealed asking that the Company maintain Mr. Osmar's Seniority rights as a Telecommunications Maintainer.

The Company has denied the appeal.

FOR THE BROTHERHOOD:

(SGD.) S. C. RUTTAN
GENERAL CHAIRMAN

There appeared on behalf of the Company:

A. Rotondo – Manager Labour Relations, North Bay
R. S. Hutton – Assistant Director Telecommunications Services, North Bay

And on behalf of the Brotherhood:

S. C. Ruttan – General Chairman, Porquis
P. A. Gosselin – Local Chairman, New Liskeard

AWARD OF THE ARBITRATOR

On May 25, 1982, the grievor, W. Osmar, was convicted of his third impaired driving offense and was sentenced to three months in jail. His driver's licence was suspended for three years. Pursuant to the "temporary absence programme" administered by the Court the grievor was released from his jail sentence in order to continue employment.

At all material times the grievor was employed as a Maintainer in the Telecommunications Branch of Ontario Northland Railway. Maintainers or Technicians are required to service, repair and maintain equipment throughout Northeastern Ontario. Because these responsibilities require the employees to drive Company vehicles, possession of a driver's licence is a condition of employment.

Pursuant to "the temporary absence programme" the grievor was given a long term position on a line gang. While employed in this position the grievor is participating in the Employer's Employee's Assistance Programme. The grievor is an admitted alcoholic.

Pursuant to article 2.3 of the collective agreement the Employer granted the grievor, with the concurrence of the General Chairman, a leave of absence for a six month period during which time he retained his Maintainer position. Upon the expiry of the first six month leave of absence the Employer reminded the grievor to apply for a second leave of absence for six months in order to preserve his seniority with respect to that position. At that point the grievor's regular position became vacant. Nevertheless he retained his seniority for an additional six month period pending the outcome of the criminal proceedings that had been initiated against him. article 2.3 reads as follows:

2.3 If an employee is granted leave of absence from the System, concurred in by the General Chairman for a period of six months or less, he may retain his position for that period. If his leave of absence is extended beyond six months, his position will be bulletined vacant at once and he may retain his seniority for an additional six months after which he loses all rights. This is not intended to apply to cases of sickness and/or disability which are, in the opinion of the Director Telecommunications Services and the General Chairman, *bona fide*.

The Trade Union has complained that the Employer violated article 2.3 by virtue of its failure to secure the concurrence of the General Chairman in acceding to the grievor's request for a second leave of absence. The Employer has conceded that it omitted to secure the consent of the General Chairman. The Employer has thereby offered to rescind its decision to allow the grievor his request for a second six month leave of absence. The Employer, at all times, has viewed its actions to have been taken in the best interests of the grievor.

In having regard to the Employer's concession, I am satisfied that there is no issue before me to resolve based upon the Trade Union's allegations of a breach of article 2.3 of the collective agreement. The Employer's admission is a sufficient finding in itself to dispose of the grievance.

However, it became apparent during the hearing that the Trade Union was under the erroneous impression that a successful result in its allegations would operate to restore the grievor's seniority with respect to his regular position. By virtue of his retaining his status as a Maintainer the Trade Union sought to persuade me to direct the employee to effect an exchange in positions of a like nature where the grievor would not be required to drive a Company vehicle. The Trade Union relied on article 6.6 to support its submission.

6.6 Exchange of shifts in the same office for short periods of time may be made when justified but only with the approval of the Supervisor.

It is clear that the Trade Union's argument has no merit. The Employer was not required, nor am I authorized in the circumstances, to make the direction requested of me pursuant to article 6.6 of the collective agreement. The effect of the Employer's breach of article 2.3 was merely to cancel or nullify the second leave of absence that was improperly granted the grievor. Accordingly the grievor's regular position not only became vacant but he lost seniority with respect to that position on the expiry of the first six month period of his leave of absence. In short, no residual rights with respect to article 6.6 of the collective agreement resided in the grievor's status for the purpose of the preservation of his job classification.

Indeed the contrary was the case. The grievor by virtue of the rescission of his second leave of absence lost six months seniority with respect to his regular position pending the clarification of his status arising out of the criminal charges initiated against him. For all the foregoing reasons, the proceedings are terminated.

(signed) DAVID H. KATES
ARBITRATOR