

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1256

Heard at Montreal, Wednesday, June 13, 1984

Concerning

**CANADIAN PACIFIC LIMITED**

and

**UNITED TRANSPORTATION UNION**

**EX PARTE**

### **DISPUTE:**

The refusal of resignation of André Verner as locomotive engineer.

### **UNION'S STATEMENT OF ISSUE:**

Following a request for resignation as locomotive engineer in favour of Conductor André Verner and denied by Company.

Mr. Verner feels that he is not qualified and demands on his part to apply UTU collective agreement memorandum of agreement 14 a) b) d), account not working as such for some years, was not applied.

The organization further requests that Mr. Verner's resignation be accepted, and that he be left as a train conductor only.

### **FOR THE UNION:**

**(SGD.) B. MARCOLINI**  
GENERAL CHAIRMAN.

There appeared on behalf of the Company:

J. H. Blotsky – Assistant Supervisor, Labour Relations, Montreal  
R. J. Pelland – Labour Relations Officer, Montreal  
B. P. Scott – Labour Relations Officer, Montreal

And on behalf of the Union:

B. Marcolini – General Chairman, Toronto  
M. Hone – Research Director, Ottawa  
A. Verner – Grievor

## **INTERIM AWARD OF THE ARBITRATOR**

The grievor, Mr. André Verner, seeks to resign his position as locomotive engineer in order to secure relief from the obligations stipulated in the UTU Memorandum of Agreement to protect work in another bargaining unit. Item 8 of the Memorandum reads as follows:

8. After being qualified to work as a locomotive engineer, trainmen/yardmen shall be required to work as a fireman (helper) in passenger service or as an engineer when required on both a regular and single trip basis.

The Company alleges the grievor's grievance of the Company's decision to reject his resignation is not arbitrable because it is being processed by the wrong Trade Union under the wrong collective agreement. It is alleged that because the grievor seeks to disassociate himself from his seniority as an engineer under the Brotherhood of Locomotive Engineers agreement, the BLE should be required to process the grievor's complaint.

The evidence demonstrated that at all material times the grievor was a member of the United Transportation Union bargaining unit, performed duties in relation to UTU work, paid dues to the UTU and was generally governed by the UTU agreement with respect to his terms and conditions of employment. Indeed, the very provision of the Memorandum of Agreement from which the grievor seeks extrication was negotiated by the UTU.

The grievor's association with the BLE agreement is based on his training as an Engineer and his placement on the BLE seniority list as a result thereof. It is in this capacity that the grievor must hold himself available to Company direction to perform BLE work as operational requirements might dictate. Indeed, the most the Company has established is that the BLE may have an interest in the outcome of the grievor's grievance.

But it has not established that the grievor owing to his membership (i.e., an employee) in the UTU bargaining unit that the UTU cannot be mandated to process a grievance on his behalf. Indeed, what may very well determine the legitimacy or otherwise of Mr. Verner's grievance is a provision of the Memorandum of Agreement negotiated by the UTU.

In short, the grievance is arbitrable by reason of its being processed by the appropriate Trade Union pursuant to the correct grievance procedure provided under the UTU collective agreement. The grievance should be listed for hearing on its merits.

**(signed) DAVID H. KATES**  
ARBITRATOR

In a letter dated July 26th, 1984, received from Mr. B. Marcolini, General Chairman, United Transportation Union, he advises in part as follows: "Please be advised that I wish to withdraw our Ex Parte request to arbitrate this dispute and you may consider the dispute of ..."

**(signed) DAVID H. KATES**  
ARBITRATOR