

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1706

Heard at Montreal, Thursday, October 15, 1987

Concerning

CANADIAN NATIONAL RAILWAY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Yard Foreman B. A. Shaw of Kamloops, B. C. for 49 hours at Yard Foreman rates of pay.

JOINT STATEMENT OF ISSUE:

Yard Foreman Shaw appeared for an investigation conducted at Kamloops, B. C. on March 8, 11, 12, 13 and 14, 1985. On March 12, 1985, the Company advised Mr. Shaw he was being held out of service pending completion of the investigation.

The Union contends that the Company held Yard Foreman Shaw out of service for a period longer than what is stipulated in Article 117.1, Agreement 4.3.

The Company has declined payment of the claim.

FOR THE UNION:

(SGD) L. H. OLSON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) D. C. FRALEIGH
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

And for the Company:

L. Harms	– System Labour Relations Officer, Montreal
J. Hnatiuk	– Manager Labour Relations, Montreal
D. C. St. Cyr	– System Labour Relations Officer, Montreal
B. Ballingall	– Regional Labour Relations Officer, Edmonton
L. E. Merryfield	– Trainmaster, Kamloops
J. R. DeNeef	– General Yardmaster, Kamloops
M. C. Darby	– Transportation Co-Ordinator, Montreal

There appeared for the Union:

L. H. Olson	– General Chairman Edmonton
J. W. Armstrong	– Vice-General Chairman, Edmonton
W. G. Scarrow	– General Chairman, Sarnia
B. A. Shaw	– Grievor

AWARD OF THE ARBITRATOR

Yard Foreman Shaw attended an investigation conducted at Kamloops B.C. on March 8, 11, 12, 13 and 14, 1985. On March 12, because of its belief that his conduct in the proceedings was abusive and dilatory, the Company advised him that he was being held out of service for the balance of the investigation. He was returned to service on March 19th. The Union submits that if the discipline imposed on the grievor is successfully grieved he is entitled to all time lost. In the alternative, should he not succeed in his grievance, it asserts that the Company could hold him out of service for no more than three days, according to the terms of the Collective Agreement. As the decision in **C.R.O.A. 1705** discloses, Mr. Shaw's grievance was not successful, and the issue therefore becomes whether the alternative position of the Union is correct.

The following provisions of the Collective Agreement are pertinent to the dispute:

117.1 No employee will be disciplined or dismissed until the charges against him have been investigated; the investigation to be presided over by the man's superior officer. He may, however, be held off for investigation not exceeding 3 days, and will be properly notified, in writing and at least 48 hours in advance, of the charges against him. ...

117.7 Employees will not be held out of service pending rendering of decision except in cases of dismissable offences.

In the instant case it is not suggested that the grievor was being investigated for a dismissable offence. Article 117.7 has no application therefore.

Article 117.1 is specific in its designation of the period of time during which an employee may be held off work for investigation. That time is described as "not exceeding three days,." In the instant case the time during which Mr. Shaw was held out of service clearly exceeds the three days, and part of it spanned a period of days after the investigation was concluded, even though he was not subject to a Company decision in respect of a dismissable offence.

In the circumstances the Arbitrator can see no justification in the language of the Collective Agreement for the course of action taken by the Company. Without commenting on the manner in which the investigation was conducted, it was at all times open to the Company to terminate the investigation if it believed that the grievor was abusing its process, drawing such negative inferences as it believed might be supported by an objective view of his conduct. It might also have continued the investigation beyond the three days, compensating the grievor for his time, but imposing a disciplinary sanction in the form of demerits if it could establish that the grievor was attempting to sabotage a Company investigation. There are, in other words, means by which the Company could protect itself against genuine abuse.

Having regard to the specific language of Article 117 of the Collective Agreement, the Arbitrator cannot conclude that it was open to the Company to hold the grievor out of service for any more than three days of the period of the investigation. Consequently, the Union's claim for compensation for March 16, 17 and 18, made on behalf of the grievor, must be allowed.

The grievance is allowed, in part, accordingly. The grievor shall be compensated in full in respect of his claim for payment for March 16, 17 and 18. In so concluding The Arbitrator acknowledges that Mr. Shaw was deprived of the opportunity to make himself available to work overtime on the 16th and 17th, which were his regularly scheduled rest days. I retain jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award.

(sgd.) MICHEL G. PICHER
ARBITRATOR