

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1747

Heard at Montreal, Tuesday, 9 February 1988

Concerning

CANADIAN NATIONAL RAILWAY

And

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Appeal the Company's decision to place the transcript of an investigation and letter relating to a personal injury sustained by Mr. R. Unger, Motorman, Winnipeg on 29 April 1985 on his personal file.

JOINT STATEMENT OF ISSUE:

On 29 April 1985, Mr. R. Unger sustained a personal injury while working as a Motorman. On 30 May 1985, he reported for an investigation in connection with the circumstances surrounding this incident.

Subsequently, a letter reminding Mr. Unger to practice more care and safety when working on behalf of the Company was sent to him. A copy of the letter and the transcript of the investigation were placed on his personal file.

The Brotherhood contends that, as no discipline was assessed, the transcript of the investigation and the letter should be removed from Mr. Unger's file.

The Company has declined the Brotherhood's request.

FOR THE UNION:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) J. P. GREEN
For: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

M. M. Boyle – Labour Relations Officer, Montreal
S. F. McConville – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

A. Cerilli – General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

On June 7, 1985 the Company addressed the following letter to the grievor:

Mr. E. Unger, Motorman
Winnipeg, Manitoba

In regard to the investigation which was held on May 30th, 1985 concerning the injury which you received on April 29, 1985.

I find that if you had exercised more care when closing the door on your tractor, this accident could have been prevented.

In future, may I remind you that you must practice more care and safety when working on behalf of the Company to avoid personal injury to yourself.

V.J. Dawdyk, Operations Supervisor
Intermodal Services, Winnipeg

The above letter was placed on the grievor's file. It is common ground that it was written following an investigation in compliance with Articles 24.1 and 24.2 of the Collective Agreement. The Company takes the position that the letter is not disciplinary, and that the letter can remain as a matter of information in the grievor's file. The Union, accepting the position that the letter is not disciplinary, contends that the letter should be removed from Mr. Unger's file.

The Arbitrator should, in so far as possible, deal only with those issues that emerge from the joint statement of issue and the case as pleaded by the parties. For reasons best known to themselves both parties in this case take the position that the letter issued to Mr. Unger is not disciplinary. In these circumstances the Arbitrator need not, and should not, consider whether that conclusion is correct.

The Arbitrator was not directed to any provision within the Collective Agreement which would restrict the Company from keeping informational, non-disciplinary material within the grievor's personal file. Given the Company's characterization of the letter of June 7, 1985, it is implicit that it cannot rely upon that document as being in the nature of a disciplinary warning or reprimand in the event of any future discipline against the grievor. Indeed, the only conclusion to be drawn is manifestly to the contrary. The Company has determined that the incident is not deserving of discipline, and therefore it cannot be used against Mr. Unger at some future time. It would be plainly inconsistent with the intention of the Collective Agreement for the Company to shelter its letter from review under the grievance and arbitration provisions and, at some later time, seek to bring it to bear against the grievor's interest.

Given the technical basis on which this grievance is advanced, and the absence of any provision in the Collective Agreement dealing with the removal of non-disciplinary notations, the grievance must be dismissed. For the purposes of clarity, nothing in this award should be taken as a conclusion by the Arbitrator that the letter issued to Mr. Unger would or would not have been found to be disciplinary if that had been an issue before me, nor should anything in this award be taken as a qualification or limitation of the prior decisions of this Office in **CROA 1349, 1486 and 1487**.

(signed) MICHEL G. PICHER
ARBITRATOR