CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1872

Heard at Montreal, Wednesday, 11 January 1989

Concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Interpretation of Article 37.06.

JOINT STATEMENT OF ISSUE:

The Union grieves that on 26 March 1987, the Railway laid off employees without giving them their fifteen (15) days' notice in violation of Article 37.06 of the Collective Agreement.

The Railway maintains that on 26 March 1987, there existed unforeseen circumstances which justified the lay off of employees, without granting them a fifteen (15) day advance notice, such as specifically provided for in Article 37.06 of the Collective Agreement.

FOR THE UNION:	FOR THE COMPANY
(SGD.) B. ARSENAULT	(SGD.) A. BELLIVEAU
GENERAL CHAIRMAN	DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

D. Manzo	– Counsel, Montreal
G. Blouin	– Assistant Vice-President, Labour Relations, Sept-Iles
A. Belliveau	– Director, Human Resources, Sept-Iles
J. Rondeau	– Counsel, Sept-Iles
J. Nadeau	– Superintendent, Transportation, Sept-Iles
D. Seymour	– Superintendent, Human Resources, Newfoundland
P. Caouette	– Counsel, Montreal

And on behalf of the Union:

R. Cleary	– Counsel, Montreal
B. Arsenault	– General Chairman, Sept-Iles
R. Collins	– Witness

AWARD OF THE ARBITRATOR

This is a grievance concerning the lay off of 75 employees of the Company due to a strike which the employer claims was an unforeseen circumstance.

The facts are not in dispute. The Company operates a rail service between Labrador City and Sept-Iles, principally dedicated to the service of the Iron Ore Company of Canada, of which it is a subsidiary. The employees of the railway, as well as the employees of the IOC Mining Company, negotiate their collective agreements at a common table every three years. The UTU, the Union bringing the instant grievance, represents the employees of the railway, with the exception of those employees in the maintenance of way department. These latter, as well as production and maintenance workers of the IOC Mining Company at Labrador City and Sept-Iles, are members of the United Steel Workers of America.

On March 23, 1987, the United Steel Workers of America began a legal strike which shut down operations at the IOC Mining Company at Labrador City. Shortly thereafter, as a result of that strike, the railway, deprived of the business of its sole client, found itself obliged to announce a general layoff for an indefinite period. It is to be noted that the railway's employees had previously accepted a final offer from their employer, made during the joint negotiations, and were not, therefore, in a position to participate in the strike, or more precisely, to make a simultaneous strike.

The question to be resolved is whether the laid off employees had a right to a fifteen day notice in the circumstances. The Union claims that this right is assured to them by Article 37.06 of the Collective Agreement, which reads as follows:

> **37.06** Employees who have completed their probationary period will be given a minimum of fifteen (15) days notice by circular, of force reduction except in cases of unforeseen circumstances.

Mr. Randy Collins is the Chairman of the local branch of the United Steel Workers of America who represented the employees of the IOC Mining Company at Labrador City. It appears from the evidence that the decision to start the strike on March 23 was also not foreseen by him. Mr. Collins relates that after a long negotiating session March 20, 21 and 22, 1987, his negotiating committee had accepted in principle a new offer from the mining company. He was not, however, optimistic as to the chances that this offer would be accepted by a general assembly of the members of the local branch.

At the time of a previous meeting at the beginning of March the general assembly had given Mr. Collins a strike mandate, which he could exercise at his discretion. Consequently, before the general meeting of March 23, Mr. Collins expected to present the new offer from the mining company, firmly believing that it would be rejected by the members. In that eventuality, he anticipated a return to the bargaining table, to communicate the response of the general meeting and to negotiate further. If the position strongly expressed by his members was not successful in procuring new concessions on the part of the employer, he thought that a declaration to strike would then be inevitable. Thus, in his own mind, there was yet a way to go before deciding on the necessity of declaring a strike.

Things did not unfold in the way Mr. Collins wished. To his surprise, during the general meeting of the morning of March 23 at Labrador City, on hearing the first portion of the new offer of the employer, the members of the local flatly refused to hear any more of the presentation of their negotiating committee. In an almost spontaneous reaction the members left the meeting room in a collective rage, setting off on a demonstration which proceeded as far as the gates of the mine. This spontaneous outburst marked then, *de facto*, the beginning of a strike which lasted five weeks.

In what sense could one say that the strike thus declared was other than an unforeseen circumstance? Mr. Collins admits that he never communicated to the mining company that he possessed a strike mandate. Likewise, if it is likely that the Company was aware of that fact, it did not have any indication from the Union of a certain date when, in default of an agreement, the strike would begin. In the circumstances, if the strike was possible, an agreement without a strike was equally possible. From the point of view of the employer, which in the view of the Arbitrator is the persepctive envisaged in Article 37.06, it was impossible to predict with certainty the fact of a strike or, if one should take place, to know the precise moment when a strike would be declared.

The jurisprudence strongly supports the conclusion that a lay off without notice is justified in the event of a strike when the Collective Agreement makes excpetion for those events outside the control of the employer or for

"major events". (*see* ***La Traverse Matane-Godbout Ltee. v. Le Syndicate Canadian des Officers de Marine Marchande S.A.G****. 16998, 28 fev. 1979. (Langlois) et* ***L'Orchestre Symphonique de Montreal v. La Guilde des Musiciens de Montreal, Local 406*** *S. A. 80-12-071, 21 nov. 1980 (Tremblay*). It is to be noted that these authorities suggest that unforeseenability is an aspect less restrictive than major events, of which unforeseenability is only a part.

It is useful to consider the purpose of Article 37.06. This article is not intended to protect employees against lay off without compensation in all cases. It is intended to assure that employees have the protection of a 15-day notice with regard to a lay off which results from circumstances which the employer is able to foresee. In other words, this article is aimed at the circumstances when the employer is in a position to protect itself in advance and therefore to protect its employees insofar as it can give them an advance notice of at least 15 days before putting into effect a lay off. In ascribing to this meaning of the article, the Arbitrator is compelled to conclude that the launching of the strike in a spontaneous fashion on March 23, an unexpected occurrence even for the chairman of the strike, was an unforeseen circumstance within the meaning of Article 37.06. I cannot, moreover, accept the argument of counsel for the union that the strike was within the control of the Company because its corporate parent, the mining company, did not accede to the demands of the United Steel Workers Union at the negotiating table in order to avoid the strike. On the other hand, in the event that the United Steel Workers had given the mining company a notice of the precise date of their strike in default of an agreement, and that that date was known by the railway, it would perhaps be more difficult to claim that the strike was then an unforeseen circumstance. Nevertheless, this hypothesis is totally contrary to the facts established by the evidence.

The Arbitrator must therefore conclude that the strike on March 23, 1987 was for the Company an unforeseen circumstance within the meaning of Article 37.06, and that the lay off announced on March 26 did not violate the Collective Agreement. For these reasons the grievance must be dismissed.

January 13, 1989

(sgd) MICHEL G. PICHER
ARBITRATOR