CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2043

Heard at Montreal, Wednesday, 11 July 1990

Concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

And

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Grievance concerning the discharge of Mr. Rejean Lalancette, effective 7 September 1988, as a result of the decision of the Canada Labour Relations Board dated 16 May 1990.

FOR THE UNION:

(SGD) B. ARSENAULT
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

D. Manzo	– Counsel, Montreal
J. Rondeau	– Legal Counsel, QNS&L, Sept Iles
J. Y. Nadeau	– Superintendent, Transportation, Sept Iles
P. Caouette	– Counsel, Montreal

And on behalf of the Union:

R. Cleary	– Counsel, Montreal
B. Arsenault	– General Chairperson, Sept Iles
R. Lalancette	– Grievor

AWARD OF THE ARBITRATOR

In his decision of 15 September 1989 (**CROA 1929**), the Arbitrator allowed the Company's preliminary objection to the effect that the grievance of Mr. Lalancette was not arbitrable by reason of the application of the time limits set out in Article 7 of the Collective Agreement. In dismissing the grievance for that reason, the Arbitrator made the following comments:

> For these reasons the grievance must be dismissed. However, the Arbitrator wishes to make clear that this sentence makes no comment of the merits of the grievance of Mr. Lalancette. He is an employee who has given 20 years of good service to the Company. He has without doubt suffered at a personal level and has now paid his debt to society. It is to be hoped that the parties could discuss in a frank and generous manner the possibility of his return to work, always at the discretion of the Railway.

Following that outcome, Mr. Lalancette was able to obtain, on May 16, 1990, a partial decision of the **Canada Labour Relations Board** allowing his complaint of unfair representation against the Union based on its failing to progress his grievance in a timely manner, in derogation of the terms of Article 37 of the Code. The Labour Board ordered, therefore, that his grievance be submitted to arbitration.

As a preliminary objection before this Arbitrator, the Company challenges the jurisdiction of the Arbitrator. It asks me to declare myself unable to arbitrate this case because the wording of the last paragraph of the award of September 15, 1989 creates in the mind of the employer a reasonable apprehension that the Arbitrator, having commented in a manner sympathetic to the interests of the grievor, is not able to now decide this case in keeping with the principles of natural justice. In particular, its counsel claims that in this instance, there exists a reasonable apprehension of bias which would suffice to disqualify an arbitrator who exercises a quasi-judicial authority.

At a subjective level, I do not consider myself unable to deal with this grievance because of a lack of impartiality. However, it is on the objective level that the analysis must be made. It is not only justice, but also the appearance of justice which must be protected in such a circumstance. (***Szilard v. Szasz*** *[1955] R.S.C.3*) The Company, like the Union, has the right, at the outset, to be able to plead its case free of any reasonable suspicion concerning the impartiality of the Arbitrator. It is self-evident that the general interests of labour relations and this Office require that the Arbitrator respect this principle.

As far as the substance of this dispute is concerned, among the factors which may figure in the argument of the instant case is the relationship between the crime for which the grievor was incarcerated, and the interests of his employer. There are other factors which could also be evaluated including his length of service and his prior disciplinary record. These facts, as well as others, may be examined in order to decide the merits of the principal position of the Union, which requests the return of Mr. Lalancette to his employment with the Company.

In my view, the observations made in the last paragraph of my award of September 15, 1989, could reasonably be interpreted by an objective reader as the expression of the Arbitrator's opinion as to the possible outcome of the analysis of the above noted factors. In this circumstance, it seems to me that prudence and good sense suggest that I must withdraw from the case in order to allow another arbitrator to rule on the issues remaining in dispute. Otherwise, the procedure risks the appearance of a lack of impartiality which could undermine the credibility of this Office.

It is to be noted that this award does not in any way prejudice the grievor. He retains all of his rights, except that they will be pleaded argued before another arbitrator named in accordance with the procedures set out in the **Canada Labour Code**. Before that arbitrator, the Union and the Company will have the fullest opportunity to plead the facts and arbitral jurisprudence, including any pertinent decisions of this Office.

For these reasons, in the very exceptional circumstances of this case, the Arbitrator allows the petition of the Company and disqualifies himself from the case. The grievance is therefore remitted to the parties to be heard by another arbitrator.

July 20, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR