

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2193

Heard at Montreal, Thursday, 10 October 1991

concerning

### CANADIAN PACIFIC EXPRESS & TRANSPORT

and

### TRANSPORTATION COMMUNICATIONS UNION

#### **DISPUTE:**

Employee Robert Stevenson was terminated from the employ of the Company for the alleged reason that he was unable to continue as a mechanic with the Company.

#### **JOINT STATEMENT OF ISSUE:**

The Union asserts that the Company cannot terminate the grievor; that the termination is without just cause and in the alternative that it is too severe and that some other accommodation ought to have been made.

The Union asserts that the grievor is capable of doing his job or in the alternative that he ought to have been assigned to some other job.

The Union alleges a violation of Article 4 and 8 of the collective agreement and any other relevant provisions and a violation of the **Canadian Human Rights Acts**.

The Union requests that the grievor be reinstated as an employee of the Company with full seniority, wages and benefits, or in the alternative such other remedy as may be appropriate.

The Company denies all of the Union's assertions. The Company asserts that the grievor was properly terminated since he was no longer able to perform his job and could not continue in the employ of the Company.

The Company asserts that an arbitrator appointed under the collective agreement has no jurisdiction to determine whether or not the **Canadian Human Rights Act** has been violated and relies on the decisions of the Canadian Human Rights Commission dismissing the grievor's complaint made under the Act.

#### **FOR THE UNION:**

**(SGD.) J. J. BOYCE**  
SYSTEM GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) B. F. WEINERT**  
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

M. Shannon – Counsel, Winnipeg  
D. F. Weinert – Director, Labour Relations, Toronto  
R. Blackmore – Regional Maintenance Manager, Prairies, Winnipeg  
M. Mathieson – Garage Supervisor, Winnipeg  
D. Sexton – Service Manager, Mid-Canada Truck, Winnipeg

And on behalf of the Union:

D. McKee – Counsel, Toronto  
J. Crabb – Executive Vice-President, Toronto M. Gauthier – Vice-President, Montreal  
R. Stevenson – Grievor

As Observer:

M. Senecal-Tremblay – Observer, CP Rail  
R. Smith – Observer, CP Rail

### **AWARD OF THE ARBITRATOR**

The material before the Arbitrator relates, beyond any substantial doubt, that the grievor suffered an unfortunate permanent head injury which substantially impacted his ability to work as a mechanic. Repeated efforts, over a substantial period of time, to reintegrate the grievor into employment into mechanic's work, both with the Company as well as with other employers, have all proved unsuccessful. The compelling conclusion to be drawn on the preponderance of the evidence is that Mr. Stevenson no longer has the capacity to work either as a mechanic with the Company or to function in the alternative position of warehouseman, which would involve the operation of a forklift and the occasional handling of dangerous goods.

Previous determinations of the **Canadian Human Rights Commission** have resulted in findings that no violation of the grievor's rights under the **Canadian Human Rights Act** has occurred. I am, moreover, satisfied that the Company has made every effort, indeed to an impressive degree, to accommodate the grievor's condition following his injury in a fair and reasonable manner. In the circumstances I am satisfied that no violation of article 4 or of article 8 of the collective agreement is disclosed in the circumstances.

For the foregoing reasons the grievance must be dismissed.

11 October 1991

**(Sgd.) MICHEL G. PICHER**  
**ARBITRATOR**