

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2208

Heard at Montreal, Thursday, 14 November 1991

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**UNITED TRANSPORTATION UNION**

### **DISPUTE:**

Claims of Conductor R.M. Dewit, Trainman L.M. Rea and Trainman P.G. Saltel, all of Winnipeg, for payment under Article 124 of Agreement 4.3.

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

During the month of June 1987 the Railway Transport Committee (RTC) initiated an enquiry under Section 226 of the Railway Act into the circumstances of a train accident occurring on the CN Gladstone Subdivision on May 27, 1987. The RTC required the above-mentioned employees to attend interviews on June 16 and 18, 1987. Following the interviews each employee submitted time returns claiming for payment pursuant to Article 124 of Agreement 4.3. The Company declined payment of the claims.

The Union contends that the RTC enquiry held under Section 226 of the Railway Act was a legal case in which the Company was involved and that these employees are therefore entitled to payment pursuant to Article 124 of Agreement 4.3.

The Company disagrees.

### **FOR THE UNION:**

**(SGD.) J. W. ARMSTRONG**  
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

D. W. Coughlin – Manager, Labour Relations, Montreal  
D. L. Brodie – Labour Relations Officer, Montreal

And on behalf of the Union:

J. W. Armstrong – General Chairperson, Edmonton  
L. H. Olson – Vice-President, Edmonton  
B. Henry – Vice-General Chairperson, Winnipeg

### **FOR THE COMPANY:**

**(SGD.) M. DELGRECO**  
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

## AWARD OF THE ARBITRATOR

The instant claim is filed under article 124.1 of the collective agreement which provides as follows:

**124.1** Employees held off duty by order of the Company's Officials to attend court or coroner's inquests on legal cases in which the Company is involved, or subpoenaed by the Crown in such cases, will be furnished with necessary transportation and paid as provided in paragraphs 124.2 and 124.3.

In the Arbitrator's view it is unnecessary to resolve the issue of whether the RTC inquiry conducted under Section 226 of the Railway Act can be said to be the proceedings of a "court" within the meaning of the foregoing provision. In my view the grievance must be resolved against the Union as there is no evidence to establish that the employees concerned were held off duty "by order of the Company's Officials" to attend the proceedings, in any event.

The record discloses that the employees were all requested to attend the proceedings by letters dated May 6, 1987 addressed to them by the Chief, Safety and Services of the Canadian Transport Commission. There is no indication on the face of those letters, or anywhere else in the evidence before the Arbitrator, that the request of the commission was prompted by the Company, or that the inquiry being conducted was at the Company's request. The most that the evidence discloses is that the grievors were reminded by their superintendent of their obligation to attend the investigative inquiry interviews, and were prepared for that process by consultation with the Company's legal counsel. While it can scarcely be denied that the Company had a genuine interest in the inquiry, the facts do not confirm that the employees were held off duty by order of the Company in the sense contemplated within the language of article 124.1 of the collective agreement. Nor were they subpoenaed by the Crown. It appears that the language of that provision is fashioned to compensate employees who are required to forfeit their work opportunities on the initiative of the Company or under compulsion by the Crown. Absent any evidence of any such direction in the circumstances of the instant case, without making any comment on whether the proceedings would constitute those of a court, the Arbitrator cannot sustain the position advanced by the Union.

For the foregoing reasons the grievance must be dismissed.

November 15, 1991

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