

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2211

Heard at Montreal, Tuesday, 10 December 1991

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

The Union wishes to have heard a dispute in connection with the reinstatement and compensation of Trainman F.J. Stoliker to correspond with his original transfer to CN's Great Lakes Region in 1984.

UNION'S STATEMENT OF ISSUE:

In 1984, Mr. F.J. Stoliker was employed with Canadian National Railways in Edson, Alberta. Mr. Stoliker requested and was granted a transfer to CN's Great Lakes Region. Upon arriving in Ontario, Mr. Stoliker was not allowed to report for work in Ontario and was pressured into resigning.

Mr. Stoliker pursued his reinstatement with Canadian National and was ultimately rehired.

The Union filed a grievance requesting that Mr. Stoliker should be reinstated on the seniority list in accordance with his transfer date from Western Canada and should be provided all of the contractual conditions in accordance with his original seniority as well as the lost earnings incurred as a result of his not being allowed to transfer to CN's Great Lakes Region in October, 1984. The Company has denied the Union's appeal on the basis that at the

time of the event now at issue, Mr. Stoliker was not covered by the 4.16 Agreement.

FOR THE UNION:

(SGD.) T. G. HODGES

GENERAL CHAIRPERSON

There appeared on behalf of the Company:

J. B. Bart	– Manager, Labour Relations, Montreal
D. L. Brodie	– System Labour Relations Officer, Montreal
N. D. Dionne	– System Labour Relations Officer, Montreal
W. D. Agnew	– Manager, Labour Relations, Moncton
G. O. Steeves	– Labour Relations Officer, Moncton

And on behalf of the Union:

H. Caley	– Counsel, Toronto
T. G. Hodges	– General Chairman, Fort Erie
F. J. Stoliker	– Grievor

PRELIMINARY AWARD OF THE ARBITRATOR

As reflected in the Union's Statement of Issue, the claim brought on behalf of Mr. Stoliker is based, in substantial part, upon the allegation that he "was pressured into resigning." Plainly, if the grievor resigned freely and voluntarily, as the Company suggests, he could have no claim to the seniority which he now seeks. Conversely, if it can be shown that his resignation was not an act of his own free will, it is, at a minimum, arguable that his seniority should not have been forfeited. Further, if it can be shown, as the Union maintains, that the Company's failure to provide appropriate records and documentation in respect of the grievor's transfer to the Great Lakes Region subsequently impeded his ability to obtain redress, there would, at least prima facie, be an issue to be arbitrated. These facts, however, are not fully before the Arbitrator, to the extent that the matter was heard on the limited issue of arbitrability. In the circumstances, the Arbitrator chooses to reserve on the issue of arbitrability and to have the matter proceed to be heard on its merits. I am satisfied that in the circumstances of this case the issue of arbitrability will be better dealt with in the fullness of such evidence as may be called on the merits of the grievance. The matter is therefore referred for the continuation of the hearing.

December 13, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR

[The matter was resolved between the parties prior to the second scheduled hearing and withdrawn from the Canadian Railway Office of Arbitration.]