

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2226

Heard at Montreal, Wednesday, 15 January 1992

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**CANADIAN BROTHERHOOD OF RAILWAY,  
TRANSPORT AND GENERAL WORKERS**

### **DISPUTE:**

Appeal of the discipline and subsequent discharge for accumulation of demerit marks to the record of R. Hosson, General Clerk, Montreal, effective June 20, 1991.

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

On May 24, 1991, R. Hosson was required to attend an investigation with respect to "failure to respect your contractual obligations with respect to the tasks assigned to you by the department by reason of your absence from work for the following periods: from February 19 to March 8, the afternoon of March 26, and from March 27 to May 17, 1991". [translation] Subsequent to the investigation, R. Hosson was assessed 60 demerit marks which resulted in discharge for accumulation of demerit marks.

The Brotherhood contends that the discipline assessed is unjust and excessively severe. The Brotherhood requests that R. Hosson be reinstated in his former position and reimbursed for all losses incurred.

The Company disagrees.

### **FOR THE BROTHERHOOD:**

**(SGN) T. N. STOL**

NATIONAL VICE-PRESIDENT

### **FOR THE COMPANY:**

**(SGN) W. T. LINEKER**

ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

- S. Grou – System Labour Relations Officer, Montreal
- R. Paquette – Manager, Labour Relations, Montreal
- A. Lepage – Manager Special Investigations, Internal Audit, Montreal
- J. Scarfone – Supervisor Special Investigations, Internal Audit, Montreal
- M. Desbiens – Materials Accounting Officer, Purchases and Materials, Montreal
- C. Zbacnik – Labour Relations Officer, Purchases and Materials, Montreal
- C. Morgan – Project Analyst, Montreal

And on behalf of the Brotherhood:

- L. St-Louis – Regional Vice-President, Montreal
- R. Hosson – Grievor

### **AWARD OF THE ARBITRATOR**

It appears from the evidence that on March 27, 1991, the grievor advised the Company that he had pneumonia and that he would be absent from work until the 1st of April. In fact, he did not return to work until May 21, 1991, after an absence of almost two months. The evidence establishes that Mr. Hosson did have two masses on his lungs. However, according to a medical report signed by a lung specialist, Dr. Yves Lachance, dated April 10, 1991, Mr. Hosson was in excellent general health and, based on a medical examination, he was fit. However, the same day, his family doctor, Dr. Jean Matter, signed a deposition which indicated the grievor's probable return to work on April 23rd. No other medical documentation was supplied to the Company.

The Arbitrator accepts the claim of the Brotherhood's representative to the effect that Mr. Hosson received medical attention in April 1991. The question to be decided, however, is whether his state of health justified his absence from work for all of the time in question, a period for which the grievor claimed sickness indemnity payments.

Concerning that question, the Brotherhood's evidence is highly dubious. An investigation held by the Company, the results of which cannot reasonably be contested, reveals that during all of the time in question Mr. Hosson worked, on a regular basis, in a private enterprise of which he is the proprietor. This enterprise, located on Notre Dame Street West in Montreal, concerns the repair and sale of secondhand household appliances such as stoves and refrigerators. The evidence, which consists of video tapes taken by Company investigators, shows that Mr. Hosson actively worked on the premises during this entire period. He served clients, filled out forms and performed all of the usual tasks of a store clerk. In spite of these activities, in completing the indemnity form which he submitted to the Company in order to claim his indemnity benefits, Mr. Hosson answered "No" to the question: "During the period claimed, were you involved in an activity?"

The evidence is to the contrary. Unfortunately, the Arbitrator must come to the conclusion that even if the grievor had certain legitimate medical symptoms at the end of March 1991, he was not sick to the point of being unable to return to work until May 21, 1991. Based on the preponderance of the evidence, I must conclude that from April 10, Mr. Hosson knowingly manipulated his doctor in an attempt to deceive his employer concerning his physical health. At that time he was able to return to his employment, a clerical position with tasks comparable to those which he performed without difficulty in his own commercial enterprise.

In sum, Mr. Hosson attempted to obtain medical indemnity benefits for more than a month, under false pretexts. His deceit included not only the abuse of the good faith of his doctor, but also a false declaration to his employer. In the circumstances, the Arbitrator must conclude that the grievor destroyed in an irredeemable fashion the bond of confidence essential to the relationship between employee and employer, and that, in spite of his many years of service, his discharge was justified in the circumstances.

In light of that conclusion, it is not necessary to consider the events relative to Mr. Hosson's absence between February 19 and March 8, 1991, which appears, moreover, to be the subject of a dispute before another tribunal. For all of these reasons, the grievance must be dismissed.

January 17, 1992

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