

NOTE: REFERENCE TO SHP-160 SHOULD READ SHP-180

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2311

Heard at Montreal, Thursday, 10 December 1992

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Appeal of the dismissal of Mr. A. Chartrand.

JOINT STATEMENT OF ISSUE:

Noting the inability of Mr. A. Chartrand to perform his work on a regular basis, and because the possibility of improvement during the next few years did not seem likely, the Company, upon the advice of its Medical Services and based on the expertise of a medical specialist, terminated the employment of Mr. A. Chartrand effective June 19, 1992.

The Brotherhood maintains that Mr. A. Chartrand cannot be dismissed without first being accorded the right to an investigation as stipulated in paragraph 24.1 of article 24 of Collective Agreement 5.1 and demands the reinstatement of the grievor with compensation for wages and benefits lost during his absence and without loss of seniority.

The Company maintains that this is not the case of a disciplinary termination and rejected the appeal.

FOR THE BROTHERHOOD:

(SGD.) T. N. STOL
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) J. D. PASTERIS
FOR: VICE-PRESIDENT, ST. LAWRENCE REGION

There appeared on behalf of the Company:

O. Lavoie	– Labour Relations Officer, Montreal
R. Duhamel	– Officer, Montreal
S. Mateus	– Nurse, Montreal
Dr. M. Leduc	– Witness

And on behalf of the Brotherhood:

L. St-Louis	– Regional Vice-President, Montreal
Dr. R. Lemieux	– Witness
A. Chartrand	– Grievor

AWARD OF THE ARBITRATOR

The evidence establishes, beyond controversy, that Mr. Chartrand's average level of absenteeism over the last nine years of his employment was 36.37%. In 1990 his level of absenteeism was 49.61% and in 1991 it reached 70.76%.

It is common ground that the grievor's absences resulted from his medical condition. According to his doctor, Dr. Raymond Lemieux, who is a psychiatrist, Mr. Chartrand suffers from pseudo-schizophrenic neurosis which is a chronic condition. According to Dr. Lemieux, he could make gains in controlling his condition by altering certain factors in his life, such as avoiding working nights, as well as by closer medical follow-up. On the other hand, the Company's medical specialist, Dr. M. Leduc, who is also a psychiatrist, submits that even with these changes relapses would be inevitable, even if one could hope that his condition could be slightly improved. The two specialists are agreed that it would be impossible for Mr. Chartrand to attain a level of absenteeism of 5%, which is the average for the employees in the department to which he is assigned. On the contrary, according to the preponderance of the evidence, the prognosis is for a level of absenteeism for Mr. Chartrand which would be more or less the same as that of the past years.

The Brotherhood submits that the Company cannot dismiss Mr. Chartrand without an investigation, as provided for in article 24 of the collective agreement. For the reasons expressed by Arbitrator Weatherill in an ad hoc award, **SHP-160**, I cannot accept the position of the Brotherhood. The present grievance does not concern discipline but rather termination for medical incapacity, a circumstance to which article 24 does not apply.

On the whole, the Arbitrator must come to the regrettable conclusion that the chronic medical condition suffered by Mr. Chartrand, and the unpredictable relapses to which he will inevitably be subjected in the future, render him incapable of performing his functions at work. The Company was therefore justified in its conclusion that he would be incapable of meeting the contractual obligation between employee and employer. The Arbitrator rules that the Company did have the right to put an end to the employment contract of the grievor.

For these reasons the grievance must be dismissed.

December 11, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR