

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2460

Heard in Montreal, Wednesday, 9 March 1994

concerning

**ONTARIO NORTHLAND RAILWAY**

and

**UNITED TRANSPORTATION UNION**

### **DISPUTE:**

Termination of the seniority of Motor Coach Operator Allan Hall.

### **JOINT STATEMENT OF FACT:**

Motor Coach Operator A. Hall was recalled to duty by telephone by Supervisor, Mr. M. Bernardi for February 19, 1993. The telephone conversation was confirmed in a registered letter to Mr. Hall asking him to respond, as stipulated in Article 24 of Collective Agreement No. 11, within a period of 15 days stating satisfactory reason for not reporting for duty. Mr. Hall failed to give a satisfactory reason for not reporting for duty. The Company removed his name from the seniority list and closed his file.

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

The Union contends that Mr. Hall did comply with Article 24. He was willing to return to work but was told by the Company there was no work for him. Also the Company could have granted Mr. Hall a leave of absence and dismissing him was too severe a penalty due to the unfortunate circumstances.

The Company contends that Mr. Hall did not satisfy the requirements of article 24 and has, therefore, refused to reinstate Mr. Hall.

### **FOR THE UNION :**

**(SGD.) K. L. MARSHALL**  
**GENERAL CHAIRMAN**

### **FOR THE COMPANY:**

**(SGD.) K. J. WALLACE**  
**PRESIDENT**

There appeared on behalf of the Company:

M. J. Restoule – Manager, Labour Relations, North Bay  
T. McCarthy – Labour Relations Officer, North Bay  
J. G. Kuiack – Director, Bus Services, North Bay

And on behalf of the Union :

K. L. Marshall – General Chairman, North Bay  
W. Ross – Local Chairman, North Bay

## **AWARD OF THE ARBITRATOR**

The Arbitrator is satisfied that the circumstances of Mr. Hall fall within the purview of article 24.4 of the collective agreement. It provides as follows:

**24.4** A laid off operator who fails to report for duty or give satisfactory reasons for not doing so within fifteen (15) days of date of notification shall forfeit his seniority rights and his name shall be struck off the seniority list.

The material before the Arbitrator discloses that Mr. Hall's licence to drive was suspended for a year following a conviction for failing to remain at the scene of an accident in which he was involved outside of his working time. When Mr. Hall was called for duty following the conviction, he had plainly lost the qualification necessary to his continued employment as a motor coach operator. The Company declined his request for a leave of absence and did not offer him alternative employment.

The Union has directed the Arbitrator to no provision of the collective agreement which would require the Company to offer Mr. Hall alternative employment in the circumstances disclosed. The collective agreement does contemplate certain circumstances in which leaves of absence are to be extended. Notably, article 24.3 allows an extension of ninety days for the recall of an operator who is employed elsewhere at the time he is recalled for duty. Article 4.1 of the collective agreement deals generally with leaves of absence and provides as follows:

**4.1** Requests by employees for leaves of absence will be given consideration in accordance with the current company policy. Employees desiring leave of absence should make written request for same to the Superintendent of Bus Operations.

It is common ground that the Company's leave of absence policy is not part of the collective agreement, and is subject to revision, and/or exception, at the discretion of the employer. As a general guideline, however, it does not contemplate the extension of leaves beyond an incidental leave of three days for persons whose service qualifications do not exceed one year, as was the case for Mr. Hall at the time of his conviction. While the Union cites examples of the Company having made exceptions to the policy, they generally relate to employees of longer service and none, insofar as the Arbitrator is aware, involving the loss of an operator's ability to drive for the period of a year.

The loss of the grievor's seniority and his discharge are separate matters. The Union raised initial objections relating to the fact that the Company did not conduct a disciplinary investigation prior to terminating Mr. Hall's employment. That position was, however, abandoned during the course of the grievance procedure. On that basis it need not be dealt with. Moreover, the issue of the procedure followed by the Company is not raised in the Joint Statement of Issue and would, to that extent, be beyond the Arbitrator's jurisdiction, having regard to the rules of the Canadian Railway Office of Arbitration. When regard is had to Mr. Hall's short service and the reason for his requested leave of absence, the Arbitrator cannot conclude that the Company did not have just cause to terminate his employment.

In the result, the Arbitrator is satisfied that the Company was correct in applying the terms of article 24.4 to the circumstances of Mr. Hall. Its determination that the loss of his ability to drive did not constitute a satisfactory reason for his failure to report for duty is, in my view, reasonable and within the contemplation of that part of the collective agreement. Under the terms of the agreement the Company was under no obligation to offer alternative employment to Mr. Hall, or to extend him a leave of absence of up to a year. His seniority was forfeited and there were ample grounds to justify the termination of his employment, given the nature of the events resulting in his conviction and the loss of his ability to perform any work as a driver in the service of the Company. For all of the foregoing reasons the grievance must, therefore, be dismissed.

11 March 1994

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