CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2635

Heard in Calgary, Thursday, 11 May 1995

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (UNITED TRANSPORTATION UNION)

DISPUTE:

Appeal of the release of J. Visser of Thunder Bay, Ontario from Company service effective June 21, 1991.

JOINT STATEMENT OF ISSUE:

The grievor entered service on June 17, 1988 as Yard Helper at Thunder Bay. On May 27, 1991, while still a probationary employee, an investigation was conducted in connection with the grievor's work record from February 23 to May 27, 1991.

The grievor was released from Company service on June 21, 1991 as a probationary employee under article 108.6 of agreement 4.3.

The Union contends that the grievor should not have been released from Company service for the following reasons: **(1.)** The grievor's lack of knowledge of article 115.3 of agreement 4.3 contributed to his actions at the time; **(2.)** The investigation held May 27, 1991 was not fair and impartial, due to the fact that the Company introduced evidence well after the proceedings had commenced; **(3.)** The grievor was totally up front with the Company during the investigation; **(4.)** The grievor's ability to perform the job requirements has not been an issue put forth by the Company and the Company therefore arbitrarily dispensed with the grievor's services by using article 108.6 of agreement 4.3.

The Union requests that the grievor be reinstated without loss of seniority and be reimbursed for all lost earnings from June 21, 1991.

The Company maintains that the grievor was justly released from Company service and has declined the Union's request.

FOR THE COUNCIL:	FOR THE COMPANY:
(SGD.) M. G. ELDRIDGE	**(SGD.) B. LAIDLAW**
FOR: GENERAL CHAIRMAN	**FOR: SENIOR VICE-PRESIDENT, WESTERN CANADA**

There appeared on behalf of the Company:

B. Laidlaw	– Labour Relations Officer, Edmonton

And on behalf of the Council:

M. G. Eldridge	– Vice-General Chairperson, Edmonton
C. S. Lewis	– Secretary, G.C.A., Edmonton

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that at all material times the grievor was a probationary employee. I am, therefore, satisfied that the Company was entitled to proceed, as it did, in assessing the suitability for employment of Mr. Visser under the terms of article 108.6 of the collective agreement, which reads as follows:

> **108.6** An employee will be considered as on probation until he has completed 90 tours of service under this Agreement. If found unsuitable prior to the completion of 90 such tours, an employee will not be retained in service under this Agreement. Such action will not be construed as discipline or dismissal, but may be subject to appeal by the General Chairman on behalf of such employee.

In the circumstances the Arbitrator must sustain the position of the Company that it was under no obligation to conduct a disciplinary investigation in accordance with the collective agreement, and the objections of the Union in respect of the obligation of a fair and impartial investigation cannot be sustained.

The evidence establishes, beyond any substantial dispute, that during the early months of 1991, the grievor's recall to work on January 26 to the date of his termination, he was repeatedly unavailable for work when called. It also appears that he attempted to deceive the Company as to the nature of a knee injury, for which he sought a leave of absence. He claimed that he had injured himself in a motorcycle accident when, in fact, his injury was sustained while working for another employer. Moreover, during the course of the investigative interview held by the Company, when the grievor disclosed his outside employment, he was not prepared to undertake to give the Company priority for his services over the other employer.

The standards which apply to the decision of an employer to terminate the services of a probationary employee for unsuitability have been canvassed in prior awards, and need not be repeated here (see **CROA 1761, 1932, 2004, 2496**). On a review of the material the Arbitrator is satisfied that the Company arrived at its decision for valid business reasons, having regard to the apparent inability of the grievor to be available for work when needed. Its decision was not arbitrary, discriminatory or in bad faith. In the result, the grievance must be dismissed.

May 18, 1995

(signed) MICHEL G. PICHER
ARBITRATOR