

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2982

Heard in Montreal, Wednesday, 14 October 1998

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

The discharge of Mr. A. Thériault, effective December 30, 1996.

JOINT STATEMENT OF ISSUE:

On December 30, 1996, the grievor was discharged because of irregularities relating to his accident at work on June 14, 1996.

The Council contests the disciplinary measure imposed because of a violation of paragraphs 82.1 and 82.2 of collective agreement 4.16. Alternatively, the Council claims that the mitigating circumstances justify a reduction in the severity of the discipline.

The Council requests that the grievor be reinstated without loss of seniority.

The Company rejected the Council's appeal

FOR THE COUNCIL:

(SGD.) R. LEBEL
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) P. C. MARQUIS
FOR: SENIOR VICE-PRESIDENT – RAILWAY OPERATIONS

There appeared on behalf of the Company:

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| J. D. Pasteris | – Manager, Labour Relations, Montreal |
| P. C. Marquis | – Labour Relations Associate, Toronto |
| R. Paradis | – Assistant Manager – Utilisation de locomotives, Edmonton |
| O. Lavoie | – Assistant Superintendent – Transportation, Montreal |

And on behalf of the Council:

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| R. Lebel | – General Chairperson, Quebec |
| A. Thériault | – Grievor |

AWARD OF THE ARBITRATOR

The evidence establishes that the grievor misled the Company concerning his physical condition and his activities during an absence claimed for medical reasons. Following an accident at work on June 14, 1996, Mr. Thériault was absent from work and received WCB benefits from June 28 to November 28, 1996. He professed to the Company that he was incapable of undertaking even light duties because of his shoulder injury.

In fact, during that same period he participated in three canoe races, including the Mauricie International Canoe Classic, a race of three days which took place from August 30 to September 2. It is agreed that Mr. Thériault used his father's name for this competition. In addition, during an interview at his residence with Supervisor Robert Paradis on October 30, 1996 he stated, in part :

Since my accident at work, I can no longer train like before, for example to make shoulder rotations with fifty pound weights in each hand, nor make long swims in the lake because the shoulder causes me pain when I stretch the arm completely in front ... I'm not even able to play golf this summer. Golfing, swimming, cycling, canoeing are all sports which I am no longer able to do since my accident and which I did before ... I have done a little (canoeing) on Lake Gareau where it is very calm. No canoeing competition took place in the summer of 1996.

Mr. Thériault claims that his rights have been violated because Mr. Paradis did not advise him that he was already in possession of information to the effect that he had participated in the canoe competitions during the summer. The Arbitrator cannot accept that claim. It is evident that the grievor hid his athletic competition activities in order to deceive the Company concerning his physical condition, for the sole purpose of receiving WCB benefits. His own doctor, Dr. Jean Varin, states in a signed declaration dated November 12, 1996, that the claimed injury would be "...incompatible with the practice of sports such as golf and canoeing." Further, he states: "I conclude that the subjective complaints and the active physical examination are incompatible with the practice of canoeing, above all competition. There is therefore, in my medical opinion, a probability of a voluntary sham."

The Arbitrator does not in any way doubt the validity of that medical expertise. I must therefore come to the conclusion that the grievor defrauded the Company, and that he followed a course of lies as well before the Arbitrator. It is evident that in this case the bond of trust which is essential in the relationship between employer and employee has been irrevocably broken, and the discharge of the grievor was justified.

For these reasons, the grievance is dismissed.

October 20, 1998

(signed) MICHEL G. PICHER
ARBITRATOR