

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3085

Heard in Montreal, Tuesday, 8 February 2000

concerning

VIA RAIL CANADA INC.

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND
GENERAL WORKERS UNION OF CANADA (CAW-CANADA)**

EX PARTE

DISPUTE – CORPORATION:

The amount of life insurance owed to the estate of Ms. Patricia Lorette.

CORPORATION'S STATEMENT OF ISSUE:

On February 18, 1997, Sun Life Insurance Company wrote to VIA Rail advising that Ms. Lorette's group life insurance in the amount of \$24,000 would be reduced to \$5,000 effective November 1, 1996. Ms. Lorette had the option to convert the difference of \$19,000 to a personal life insurance policy.

As Ms. Lorette did not request the conversion to a personal insurance policy, her entitlement to life insurance was reduced to \$5,000.

The Union contends that the Corporation did not provide Ms. Lorette with a copy of Sun Life's letter, therefore she was not aware of her obligation to convert the life insurance policy to maintain coverage of \$24,000. The Corporation maintains that the practice is to forward a copy of the letter to the employee and this was done.

In addition, the Corporation maintains that the benefits booklet given to the employees clearly outlines the requirements for the employee to ensure the continuance of full life insurance coverage, and the employee is responsible to ensure they meet the requirements.

DISPUTE – UNION:

Concerning the loss of \$19,000 to deceased employee's estate (Ms. Patricia Lorette) when VIA Rail failed to notify the grievor that she could convert her life insurance policy to a personal policy in the amount of \$19,000.

UNION'S STATEMENT OF ISSUE:

On February 18, 1997, Sun Life Insurance Company wrote to VIA Rail advising that Ms. Lorette's group life insurance in the amount of \$24,000 was about to terminate and that her group life insurance would reduce to \$5,000. They further advised that the difference of \$19,000 could be converted to a personal policy "without evidence of good health" provided the premiums for said policy were made by the insured.

It is the Union's position that VIA Rail failed to provide Ms. Lorette with a copy of Sun Life's letter as is common practice. It is further the Union's position that when Ms. Lorette's past is taken into consideration, it is reasonable and probable, that Ms. Lorette would have paid the premiums had she been aware of that requirement. It is further the Union's position that Ms. Lorette would have paid the premiums given the state of her health.

The Union alleges a breach of past practice with respect to the forwarding of Sun Life's letter. The Union further alleges a violation of article 36.1 of collective agreement no. 1 as well as the provisions of the Benefits Booklet pages 31 and 35.

The Corporation denies any wrongdoing and any violation of the collective agreement.

FOR THE UNION:

(SGD.) R. JOHNSTON
NATIONAL REPRESENTATIVE

FOR THE COMPANY:

(SGD.) E. J. HOULIHAN
FOR: DIRECTOR, HUMAN RESOURCES & LABOUR RELATIONS

There appeared on behalf of the Corporation:

E. J. Houlihan	– Sr. Manager, Labour Relations, Montreal
L. Laplante	– Labour Relations Officer, Montreal
J. DeBroux	– Pensions & Benefits, Montreal

And on behalf of the Union:

D. Olshewski	– National Representative, Winnipeg
R. Masse	– Regional Representative, Montreal
D. Gagnon	– Witness
H. Lorette	– Witness

AWARD OF THE ARBITRATOR

This grievance is brought by the Union on behalf of the estate of the late Ms. Patricia Lorette. The claim is for an amount of \$19,000 which, it is alleged, the deceased employee's estate would have received had her life insurance forms and information been properly handled by the Corporation.

The background facts in relation to this claim are not in dispute. In June of 1993 the deceased was diagnosed with breast cancer. Following surgery she had extensive treatment which continued over a number of years, as her condition slowly aggravated. In May of 1996 Ms. Lorette applied for long term disability, which was approved in August of the same year. She remained in receipt of her long term disability benefits from September of 1996 until her death in March of 1998.

The provisions of the Corporation's life insurance plans, which are described in notes appended to the collective agreement, are as follows:

Life Insurance

For employees currently in service with the Corporation, group life insurance coverage guarantees a death benefit in the amount of \$ 24 000 payable to the beneficiaries named by the employee, subject to the terms of the policy with the insurer.

Group life insurance includes a Double indemnity provision on a « 24-hour basis » in the event of accidental death, subject to the terms of the policy with the insurer.

Life insurance is payable in a lump sum regardless of the cause of death.

Life insurance benefits will be paid to:

- i) the beneficiary named by the employee, or if none is named,
- ii) the employee's estate.

(original emphasis)

Continuance of Life Insurance Protection

...

Whenever an eligible employee is removed from the payroll owing to a disability and is in receipt of weekly disability benefits payments or unemployment insurance sick benefits, his/her life insurance, including accidental death coverage, will remain in force without payment of the requisite premiums for up to a maximum of six (6) months. If he/she remains off the payroll for more than six (6) months owing to such disability, it is his/her responsibility to make arrangements to have his/her coverage continued by remitting the appropriate premium amounts to the Corporation for a further maximum period of six (6) months.

If the disability lasts after 12 months before his/her sixtieth (60th) birthday, his/her life insurance, including accidental death coverage, will remain in force without further payment of premiums, provided that satisfactory proof of total disability is submitted to the insurance company within one (1) year of the last day of the month during which active service ceased owing to this disability.

Coverage will remain in force for as long as the total disability lasts, provided that the eligible employee does not engage in any remunerable employment, does not retire, but does supply periodical proof of disability as required by the insurance company.

After the 12 month period, life insurance coverage is reduced to \$ 5000. However, the eligible employee may apply within thirty-one (31) days of the date reduced coverage goes into effect, for conversion from a group to a personal insurance policy to which an accidental death provision may be attached up to a maximum amount of \$ 19 000, provided that the request is forwarded.

(emphasis in original)

It is common ground that Ms. Lorette did diligently protect her insurance coverage during the second six month period described in the above quoted passage. She did so by providing personal post-dated cheques to the Corporation for the full amount of the insurance premium.

The record also reflects that Ms. Lorette remained concerned to ensure that her life insurance be fully paid up, being cognisant of her negative medical prognosis. It is not disputed that from her hospital room, on or about October 18, 1996, Ms. Lorette spoke by telephone with Sun Life representative Wendy Holbrook. Mr. Lorette, who was present in the room, relates that at the conclusion of the conversation his wife told him that she was advised that as long as she was on long term disability she would have no obligation to make any premium payments, and that her life insurance remained in force. Technically, of course, that would be accurate. However, at the conclusion of the twelve month period the plan requires the employee to effect a conversion from a group to a personal insurance policy, and to make arrangements for directly paying the premiums themselves thereafter. Failure to do so would reduce the life insurance benefit to \$5,000 from \$24,000. It is common ground that based on the information available to her the grievor did not pay the additional premium. As a result, following her death her estate was advised by Sun Life that her benefit entitlement was not \$24,000, as expected, but rather \$5,000.

The issue before the Arbitrator is whether the Corporation is, in the circumstances disclosed, responsible for the loss of \$19,000 to the grievor's estate. As a preliminary matter, it is not disputed that life insurance is a negotiated benefit which forms part of the collective agreement. The Corporation's obligations in that regard flow from a memorandum of settlement originally dated May 21, 1992, which has since been periodically renegotiated, and which is referenced within article 36.1 of the collective agreement.

It is also common ground that when an employee in the circumstance of Ms. Lorette becomes eligible for a life insurance policy conversion the necessary form is forwarded to the Corporation by Sun Life. The Corporation then sends the Sun Life application form to the employee for their attention. The material before the Arbitrator confirms that Sun Life wrote to Mr. Robert Mandeville of the Corporation's head office in Montreal, advising him of Ms. Lorette's eligibility for conversion. The text of that letter reads, in part, as follows:

It is important for Ms. Lorette to know that the insurance hereby being extended, reduces to an amount of \$5,000.00 on November 1, 1996, or if earlier, on the first of the month following her retirement or otherwise ceasing to maintain employee status. The difference of \$19,000.00, however, may be converted to an individual contract without evidence of good health providing the completed application and required premium for the individual contract are received by Sun Life within 31 days after the date of this letter.

At the hearing the Corporation acknowledged that the original letter received from Sun Life is still in the deceased employee's file. While the Corporation's representative submits that it is routine in such circumstances for either the original letter or a photocopy to be mailed to the subject employee, there is no notation in the file nor any other means of verifying that a copy of the letter from Sun Life of Canada dated February 18, 1997 was ever forwarded to Ms. Lorette. The Corporation submits that if there was a failure to deliver the letter, that of itself should not be sufficient to support the claim of Ms. Lorette's estate. In the employer's view the obligations of the employee are adequately described within the insurance plan material appended to the collective agreement, so that Ms. Lorette knew or should have known of her obligation with respect to applying for a policy conversion.

The Arbitrator has some difficulty with that submission. Firstly, it is not disputed that the Corporation has undertaken a collective agreement obligation to provide life insurance for the employees of the bargaining unit. While the language within the plan description appended to the collective agreement is generally descriptive, it is clearly not intended as a step by step instruction for individual employees. It is also, on its face, arguably ambiguous if not contradictory, to the extent that the first and second explanatory paragraphs state, in part, "... coverage, will remain in force without further payment of premiums ... Coverage will remain in force for as long as the total disability lasts ..." (original emphasis). An employee reading only that far could arguably form the view that they remain fully protected for life insurance purposes so long as they continue to be on a leave of absence for total disability. Given the unchallenged evidence with respect to the diligence of Ms. Lorette having maintained her premiums for the six month period, and her direct inquiries with Ms. Holbrook, I am satisfied, on the balance of probabilities, that she was at all material times concerned to protect her full entitlement.

It is clear to the Arbitrator, based on the practice of both the insurer and the Corporation, that the plan contemplates that insured individuals are entitled to direct notice of any pending change in their own coverage. That is clearly reflected in the issuing of the letter of February 18, 1997 by Sun Life of Canada to Mr. Mandeville of the Corporation. It is not disputed that such letters are received by the Corporation as a matter of course, and that it has assumed an agency role in communicating the content of those letters to the employees affected. It appears that the Corporation's role also extends to receiving direct premium payments from insured employees, as was done with Ms. Lorette for the earlier six month period.

A document such as the letter of February 18, 1997 is obviously one of critical importance to the employee whose rights and entitlements may be affected. It is not unreasonable, in that circumstance, to expect that the Corporation would be diligent in ensuring that the content of the letter is properly sent to the individual concerned for their immediate attention and that a record of that communication, such as a copy of a covering letter or some other notation, be kept on the file. However, in the instant case there is no evidence whatsoever to confirm that the letter was ever sent to the deceased employee. On the whole of the evidence, I am compelled to the conclusion, on the balance of probabilities, that the letter was not in fact sent to Ms. Lorette. Given the care which she demonstrated in maintaining her premiums over the six month period by means of personal cheques forwarded to the Corporation, and her own further inquiries to Ms. Holbrook of Sun Life, the specific content of which apparently cannot now be recalled by the Sun Life representative, confirm that she followed a deliberate and careful course to do all that was necessary to preserve her full life insurance entitlement. In that context, the failure on her part to apply for the necessary conversion is, in my view, most probably consistent with the fact that she never received the letter of February 18, 1997 and that in fact it was not sent to her.

In the circumstances, the Arbitrator is compelled to conclude that the Corporation did violate its obligation to the grievor by failing to properly advise her of the need to apply for a policy conversion within thirty-one days of the date of the letter or instruction from Sun Life. I am satisfied, on the balance of probabilities, that the Corporation's failure occasioned the financial loss of some \$19,000 to the estate of the deceased employee. On that basis the grievance must be allowed. The Arbitrator directs that the Corporation pay forthwith to the estate of Ms. Lorette a sum of money to fully compensate for the loss of \$19,000 in life insurance benefits. Should there be any dispute between the parties respecting the amount or manner of payment, the matter may be spoken to.

February 12, 2000

(signed) MICHEL G. PICHER
ARBITRATOR