

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3311

Heard in Montreal, Wednesday, 11 December 2002

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

The suspension of Locomotive Engineer Mr. René Laroche.

BROTHERHOOD'S STATEMENT OF ISSUE:

On February 27, 2002 the Quebec Provincial Police asked Mr. Raymond Labrecque, ticket agent at La Gare du Palais in Quebec, information on the arrival of the next train from Montreal. The police officers were advised that the train no. 20 from Montreal would arrive at 10:00 a.m. The police officers advised Mr. Labrecque they would return at 09:30 a.m. and that they were looking for Mr. Laroche. At approximately 07:30, Mr. Labrecque advised Mr. Leo Savoie, head of the customer service, about the situation. At 09:30 Mr. Labrecque called Mr. Savoie and advised him that the police had returned. Mr. Savoie met with the police officers and asked them if this was a family matter. Their answer was no. Mr. Savoie explained to the police officers the duties that Mr. Laroche was to perform once his train arrived and inquired as to whether Mr. Laroche would be able to finalize his tour of duty. The police officers advised that it was their intention to ask Mr. Laroche to follow them immediately as soon as his train arrived. Upon the arrival of train no. 20 the police officers asked Mr. Laroche to follow them. This was done with discretion and without handcuffs.

On March 18, 2002 Mr. Laroche received a letter from the Corporation asking him to present himself on March 21, 2002 for a statement concerning the lack of completion of his tour of duty and for his conduct resulting in criminal accusations against him on Thursday, February 27, 2002 at La Gare du Palais. The Corporation and the local chairman postponed Mr. Laroche's statement twice because Mr. Laroche required more time and information concerning his situation. On April 8, 2002, Mr. Laroche received a letter from the Corporation asking him to present himself on April 11, 2002 for a statement. As a result, the Corporation has suspended Mr. René Laroche without salary until the end of the judicial procedures.

The contention of the Brotherhood. The Corporation has unjustly suspended Mr. Laroche based on alleged conduct that, if it occurred, occurred outside the scope of Mr.

Laroche's duties and responsibilities with VIA Rail and during a time when he was not on duty. Mr. Laroche has an excellent service record with both VIA and CN for the past 29 years. The alleged conduct of Mr. Laroche, even if proven true, did not affect the reputation of the Corporation, nor did it jeopardize the safety of the customers of the Corporation. Mr. Laroche is completely capable of fulfilling the duties required of a locomotive engineer for the Corporation.

The Brotherhood requests that the Corporation revoke the suspension of Mr. Laroche and that he be reinstated immediately and receive compensation for all loss of earnings, benefits and seniority.

FOR THE BROTHERHOOD:

(SGD.) R. LECLERC
GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

E. J. Houlihan	– Sr. Manager, Labour Relations, Montreal
M. Bastien	– Labour Relations Officer, Montreal
G Benn	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

P. Hunt	– Counsel, Ottawa
R. Leclerc	– General Chairman, Grand-Mère
G. Hallé	– Canadian Director, Ottawa
R. Dyon	– General Chairman, Montreal
P. Vickers	– Vice-General Chairman
J. Duff	– Student at Law, Ottawa
R. Laroche	– Grievor

AWARD OF THE ARBITRATOR

The grievor maintains that he has been improperly held out of service pending the disposition of certain criminal charges. The Corporation maintains that the nature of the charges against him and the potential risk to safe operations and the Corporation's public reputation justifies the temporary suspension of Locomotive Engineer Laroche until such time as the criminal charges have been finally disposed of.

The facts are not in dispute. On February 27, 2002 the grievor was taken into custody by two members of the Quebec Provincial Police upon his arrival on train 20 between Montreal and Quebec City, at La Gare du Palais in Quebec City. He remained in custody from February 27 to March 4, 2002, whereupon he was released on bail.

The grievor's arrest was part of a major police operation concerning the break-up of a drug ring operating in Quebec and New Brunswick, involving the Hells Angels motorcycle gang. Forty-six people were arrested and charged in that operation, including the grievor. Mr. Laroche was and remains charged with conspiracy to traffic a prohibited drug under the **Controlled Substance and Drug Act**, contrary to section 465 of the **Criminal Code**, trafficking in a prohibited drug, namely 2,000 tablets of "ecstasy", participating in gang activities related to the trafficking of "ecstasy" and possession of monies received as a result of criminal acts punishable under section 355(a) of the **Criminal Code**.

Charged along with Mr. Laroche were a number of members of the Hells Angels in Quebec City, including the alleged leader of the drug ring, Quebec City Hells Angels member Daniel Hudon. The Corporation notes that while a number of the persons arrested were charged with fewer offences, the grievor is one of four persons charged with more than three offences, including Mr. Hudon.

During the course of a disciplinary investigation conducted by the Corporation the grievor declined to provide any substantial information with respect to the charges against him, on the advice of his criminal lawyer. He nevertheless denied any guilt of the charges against him, an assertion which he repeated at the arbitration hearing. During the course of the Corporation's investigation Mr. Laroche was asked if he had ever been the subject of criminal charges in the past. To that question he responded that he had been the subject of 40 charges in 1993, although he then added that he does not presently have a criminal record.

In the case at hand there is presently no evidence to confirm that the grievor involved himself in any criminal activities during the course of his employment. He denies having possessed or transported drugs during his employment, as well as claiming innocence of all the charges against him.

Assuming, without finding, that the matters in relation to which Mr. Laroche has been charged criminally are entirely unrelated to his employment – a matter which will only be clarified based on the evidence which may emerge at his trial – this Office has had prior occasion to consider the principles which apply to the merits of a suspension pending determination of non work-related criminal charges. In **CROA 1703** the following passage appears in that regard:

A first issue in the instant case is whether the Company was justified in holding the grievor out of service pending its investigation. The conduct for which he was criminally charged appeared, on its face, to involve activities away from the workplace and on the grievor's own time. It is well-established that the laying of a

criminal charge does not, of itself, justify the suspension of an employee, particularly where the conduct giving rise to the charge does not appear to be work-related. In some cases, however, off-duty conduct that is the subject of a criminal charge may seriously affect the legitimate interests of the employer. The operative principle was well summarized by the majority of the board of arbitration in **Re Ontario Jockey Club and Mutuel Employees Association** (1977) 17 L.A.C. (2d) 176 (Kennedy) at p. 178:

... The better opinion would appear to be that the employer's right to suspend where an employee has been charged with a criminal offence must be assessed in the light of a balancing of interests between employer and employee. The employee, of course, has a legitimate interest in being considered innocent until he has been proven guilty. If, however, the alleged offence is so related to the employment relationship that the continued employment of the employee would present a serious and immediate risk to the legitimate concerns of the employer as to its financial integrity, security and safety of its property and other employees as well as its public reputation, then indefinite suspension until the charges have been disposed of would appear to be justified. In determining the nature of the legitimate interests of the employer, it is necessary to look at the nature of the offence, the work being performed by the employee, and the nature of the employer's business.

(See also **Re Oshawa General Hospital and Ontario Nurses Association**, (1981), 30 L.A.C. (2d) 5 (Adams) where a board of arbitration sustained the suspension by a hospital of a nurse found in possession of a substantial quantity of marijuana and marijuana plants, and charged with the possession of narcotics for the purposes of trafficking and see, generally, **Re Hydro Electric Commission of the City of Hamilton and International Brotherhood of Electrical Workers, Local 138**, 1984, 13 L.A.C. (3d) 204 (Devlin)).

Can it be said that in the case at hand the legitimate concerns of the employer in relation to such factors as security and safety, and its public reputation justify the temporary suspension of the grievor pending his criminal trial? In the Arbitrator's view the objective facts support the position of the Corporation in that regard. The employer is a railway engaged in the carriage of the public in high speed passenger service throughout Canada. It is well established that the highly safety-sensitive nature of a locomotive engineer's duties are incompatible with involvement in the use, possession, production or trafficking of prohibited narcotics. While Mr. Laroche is plainly entitled to

the presumption of innocence as regards his rights under the criminal law, for the purposes of the law of employment the objective facts surrounding the charges against him raise substantial legitimate concerns. Media reports, in which his name and photograph have appeared, have associated him, as have the charges against him, with criminal gang activities allegedly conducted by the Hells Angels. Of the forty-six individuals arrested on February 27, 2002, he is among the four most heavily charged. Additionally, as reflected in his own disciplinary investigation, the grievor faced a substantial number of criminal charges in 1993, albeit it appears that he does not now have a criminal record.

In the Arbitrator's view in the circumstances disclosed it is amply within the prerogatives of the Corporation to protect its legitimate interests, including the safety of its passengers and its own reputation, until such time as the charges against Locomotive Engineer Laroche have been fully disposed of. As commented by this Office in **CROA 1703**, a grievance also involving the removal from service of an employee heavily involved in the drug culture:

... The Company is not obliged to await a tragic accident or a scathing editorial before acting to protect its reputation.

On the whole of the material before me I am satisfied that in the circumstances the Company is justified in suspending the grievor pending resolution of the criminal charges against him.

For these reasons the grievance must be dismissed.

December 13, 2002

MICHEL G. PICHER
ARBITRATOR