# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 3346

Heard in Montreal, Thursday, 12 June 2003

concerning

## CANADIAN PACIFIC RAILWAY COMPANY

and

## BROTHERHOOD OF MAINTENANCE EMPLOYEES

## EX PARTE

**DISPUTE:**

Claim of behalf of Messrs. G. Noël, J. Bernard and all other similarly affected employees.

**BROTHERHOOD'S STATEMENT OF ISSUE:**

The Company, by way of letter, advised the grievors (all individuals who were injured and who, as a result, were absent on authorized leave) that "based upon the length of your absence (from duty), we have concluded that you will not be returning to active service. In view of the foregoing please be advised that your personnel file is being closed effective immediately". In response, a policy grievance was filed.

The Union contends that **(1.)** During the time the grievors were absent form work, the Company failed in its duty to accommodate them; **(2.)** The duty to accommodate is ongoing and the Company cannot, therefore, simply close the grievors' files; **(3.)** The Company violated Appendix B-12 of Agreement NO. 14.

The Union requests that the grievors be reinstated into Company service forthwith without loss of seniority and that they be made whole for any and all losses incurred as a result of this matter.

The Company denies the Union's contentions and declines the Union's request.

**FOR THE BROTHERHOOD:**

**(SGD.) J. J. KRUK**
**SYSTEM FEDERATION GENERAL CHAIRMAN**

There appeared on behalf of the Company:

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| M. Shannon | – Counsel, Calgary |
| M. DeGirolamo | – Assistant Vice-President, Industrial Relations, Calgary |

And on behalf of the Brotherhood:

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|---|---|
| P. Davidson | – Counsel, Ottawa |
| J. J. Kruk | – System Federation General Chairman, Ottawa |
| D. McCracken | – Federation General Chairman, Secretary-Treasurer, Ottawa |
| D. Brown | – General Counsel, Ottawa |

## AWARD OF THE ARBITRATOR

This grievance raises a relatively new issue. Is the Brotherhood entitled to notice when the Company decides to close the employment file of an individual who has been absent on a long-term basis by reason of illness or injury, in respect of whom a duty of accommodation is owed?

The dispute is prompted by the Company's closure of the employment files of a number of employees commencing in January 2002, without notice to the Brotherhood. Through a policy grievance the Brotherhood submits that the Company owes a duty of accommodation to any disabled employee up to the point of termination, and cannot, at the point of termination, deal on a one-to-one basis with that employee without involving the Brotherhood, to the extent that the duty of accommodation may still come to bear in the circumstances of the individual concerned. The Company asserts that an individual who may have been the subject of efforts at accommodation and who subsequently remains absent from work for an extended period of time is, like any employee who has been absent for an extended period, liable to have his or her employment administratively terminated by the closing of his or her employment file. In that circumstance, whether it concerns an employee who has failed to return to work upon a recall following a layoff, has been involved in extensive innocent absenteeism or indeed has been terminated for just cause, the employer stresses that there is no obligation upon the Company to advise the bargaining agent, and that the obligations are no different as regards an employee whose extended absence was prompted by a disability.

The instant dispute arises within the context of a larger administrative initiative undertaken by the Company. The evidence confirms that in the last few years the Company has undertaken the implementation of a Human Resources Information System (HRIS). The development of that system brought to light a number of persons whose employment files remained open even though they may not have worked for the Company for a number of years. That process confirmed that in a number of cases stale personnel files had not been closed by reason of administrative oversight. To deal with the closing of stale dated files the Company established a cross-functional committee, including representatives from the departments of Industrial Relations, Employee Relations, Law, Disability Management and Pension Services. On a bargaining unit by bargaining unit basis, the committee proceeded through the list of persons identified for possible file closure, duly assessing them in light of legal, employment, human rights and other considerations that might be appropriate. The circumstances of extended absence dealt with were various, including individuals who had been laid off and did not respond to a recall, persons who suffered from a non-work related illness or injury as well as a work related illness or injury and employees who may have taken a leave of absence and simply never returned. The exercise revealed individuals who had gone missing for a considerable period of time, and in one case as long ago as 1979.

The culling process clarified the status of various categories of persons. For example, the Pension Department identified forty-one cases of employees who had terminated employment, but whose termination was not reflected in the HRIS records. It appears that some of those individuals had in fact retired and were receiving a CP pension. The forty-one files in question were therefore closed. Persons who were in receipt of job security benefits were identified and removed from consideration, and persons who might be involved in active human rights files, or who might be participating in the Company's return to work program following an injury or illness, were also eliminated from possible file closure. By way of example, the Company notes that in 2002 some 236 employees in the bargaining unit of the Brotherhood were involved in that program, 173 of whom returned to regular duties and 63 to modified duties. Similarly, workers' compensation related files were identified not to be closed unless it was established that the individual in question had plateaued in rehabilitation for at least two years and had no hope of returning to service, either in a regular capacity or through the return to work program. The closure of workers' compensation files obviously did not impact the right of the injured employee concerned to the compensation benefits to which he or she might properly be entitled.

One hundred and forty-five files of employees within the bargaining unit of the Brotherhood were identified for review by the cross-disciplinary committee. Of those it was found that 104 had been laid off and simply failed to respond to recall. It does not appear disputed that such situations are caught by the provisions of article 15 of the collective agreement which provides, in part, as follows:

> **15.7** Except as provided in Clause 15.8, when staff is increased or when vacancies of forty-five days or more occur, laid-off employees shall be recalled to service in seniority order in their respective classifications by registered mail. Failure to respond to such recall within fifteen days

> of the date the registered letter was sent to the employee's last known address, shall result in severance of employment relationship, unless satisfactory reasons are given.
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> …
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> **15.10** A laid-off employee must keep the proper officer of the Railway advised of his address at all times.

An examination of the members of the Brotherhood who were identified through the committee process included eighteen individuals absent as a result of compensable injuries who had not been able to return to work. As noted above, such persons were not considered for file closure unless their physical condition had stabilized for a period of at least two years, with no likelihood of being able to return to work. Fifteen people were identified as having left the Company for injuries which were non-work related, and by reason of which they were unable to return, six were found to have left on educational programs under the Employment Security Agreement and two left on personal leave and never returned.

In early 2002 the Company issued letters to the individuals identified for file closure. An example of such a letter placed in evidence before the Arbitrator is the communication of January 24, 2002 sent to employee G. Noël of Clive, Alberta. That letter, with confidential financial information deleted, reads as follows:

> Dear Mr. Noël,
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> A review of Company records has determined that you have been inactive since November 17, 1992. Based upon the length of your absence, we have concluded that you will not be returning to active service. In view of the foregoing please be advised that your personnel file is being closed effective immediately.
>
> I have enclosed a copy of you Annual Pension Benefit Statement as of December 31, 2000.
>
> This statement reflects benefits based on your pension contributions and pensionable service to the end of the year 2000. Although you are in arrears, your pensionable services assumes you have made all required pension contributions. Any pension contribution shortages that resulted from absences were contributions were not collected must be paid in full before you receive the full benefits outlined in this statement.
>
> As of December 31, 2000, you owed [deleted] in outstanding pension contributions. Failure to pay this amount in full will result in the reduction of pensionable service and the related benefit entitlement.
>
> Your actual pension benefit entitlement upon closing of your employment record may vary from the amount indicated in the statement because of time that elapsed between the end of year 2000 and the actual date your record was closed. However, the amounts displayed in your statement do provide an indication of your benefit entitlement should you pay the outstanding arrears.
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> Before your actual entitlement can be calculated we must make a determination of the actual service and earnings that are to be used. Therefore, you are required to advise Pension Services before February 28, 2002 of your intention to pay the outstanding contributions or forfeit the related service and earnings.
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> Failure to so advise within the time allowed will result in the default election to forfeit service. Earnings related to the unpaid contributions and your pension benefit entitlement would be reduced accordingly. A revised statement of benefit entitlement will then be automatically issued based on the reduced service and earnings in the month following the date of deemed election of forfeiture. This deemed election will be irrevocable and you will not be entitled to but back this period at any time in the future.
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> Should you have any questions regarding this please call Pension Services at [deleted] in Calgary or contact the following:
>
> Pension Services
> Gulf Canada Square
> 401 – 9th Avenue SW
> Calgary, Alberta

T2P 4Z4

M. G. DeGirolamo
Assistant Vice-President
Industrial Relations
Canadian Pacific Railway

It appears that a number of employees reacted to the closure of their files by protesting personally to the Company. Counsel for the Company relates to the Arbitrator that in seven cases individuals contacted the Company and were subsequently accommodated and returned to work, three of whom are in the bargaining unit represented by the Brotherhood. It also appears that the process resulted, in some cases, in the return of overdue pension monies to some of the employees concerned.

It should be stressed that the parties to the instant case have an extremely positive record in developing policies and procedures concerning the accommodation of disabled employees. Well in advance of current legislation, or of the decisions of boards of arbitration, human rights commissions and the courts, the parties themselves took pioneering steps to bring a measure of compassion and equity to the treatment of disabled employees in the workplace. As early as April 19, 1982 they signed a joint letter of understanding, presently incorporated as Appendix B-12 of their collective agreement which reads, in part, as follows:

> This has reference to discussions during the current contract negotiations with respect to the railways' proposal regarding the desirability of undertaking special arrangements for an employee who becomes physically disabled during the course of his employment and is unable to perform the regular duties of his assigned position and is unable to exercise his seniority on a position which he is capable of performing.
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> This letter will confirm our understanding that, in such circumstances, the proper officer of the Company and the General Chairman of the Union will meet to see if arrangements can be made to provide employment to the employee concerned within the bargaining unit. The parties may, by mutual agreement, place a disabled employee on a position that his qualifications and ability allow him to perform, notwithstanding that it may be necessary to displace an able-bodied employee in the bargaining unit so as to provide suitable employment. The permanently assigned employee so displaced will be allowed to exercise seniority onto a position within the bargaining unit that he is qualified for and has the ability to perform.
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> A disabled employee placed on a position shall not be displaced by an able-bodied employee so long as he remains on that position except when a senior employee is otherwise unable to hold a position within his seniority group.
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> Should the disabled employee subsequently recuperate, he shall be subject to displacement, in which case such employee will exercise seniority rights. When a senior able-bodied employee believes that the provisions of this letter will result in undue hardship, the General Chairman may discuss the circumstances with the Company.
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> The above understanding is to provide guidelines for assisting disabled employees to continue to be employed.

In addition, in more recent times the Company has developed a sophisticated and impressive system for handling disabled employees on a case-by-case basis, a process reviewed with approval in a prior award of this Office (see **CROA 3036**). There is no question but that both parties before the Arbitrator are fully aware of and sensitive to the duty of accommodation and have an exemplary shared history of progressive achievements in this area.

The instant dispute arises by reason of the Brotherhood's objection to receiving no notice concerning the effective termination of employees who have disabilities and were the subject of accommodation procedures at some time in the past. The Brotherhood asserts that the statutory obligation of accommodation, established under the **Canadian Human Rights Act**, R.S.C. 1985, c. H-6, continues up to the point of termination. It argues that the consideration of possible options of accommodation are ongoing, and cannot be dealt with unilaterally and in-house by the employer, without the involvement of both the employee and his or her union. From a practical standpoint the Brotherhood stresses that, as acknowledged in the Company's own materials, the closing of the files of certain individuals in fact resulted in protests by the employees which, in some cases, led to their subsequent

accommodation and return to work. A related concern raised by the Brotherhood is the quality of information which might be provided to disabled employees, for example in relation to their entitlement to a disability pension.

The Brotherhood takes no issue with the method adopted by the Company insofar as it relates to closing the files of employees who may have simply abandoned their employment, whether by failing to respond to a recall to work following a layoff or not returning from a leave of absence. It does not dispute the position of the Company that there is nothing in the collective agreement or otherwise in law which would give to the Brotherhood the right of notice in respect of the decision of the Company to terminate the employment of persons in that circumstance. The Brotherhood's counsel and representatives argue, however, that substantially different considerations operate where disabled employees are concerned, bearing in mind that, following the decisions of the courts, it is well established that the exercise of reasonable accommodation is one which imposes continuous obligations, and by implication participation, on the employer, the trade union and the employee.

Counsel for the Company takes a different approach. He starts with the proposition that, absent any contrary provision in the collective agreement, the Company retains the ability to communicate directly with employees alone concerning the termination of their employment, as for example in instances of discipline and administrative termination for innocent absenteeism. In counsel's view the situation is no different when the employee is absent for an extended period of time by reason of a disability, in circumstances where there is little or no reason to believe that his or her ability to return to active employment will change. He stresses that the ability of an employer to close an employee's file for innocent absenteeism is well confirmed in the arbitral jurisprudence, citing **Re Air Canada** [1997] M.G.A.D. No. 69 (Chapman); **Re Emrick Plastics and CAW, Local 195** (1992), 25 L.A.C. (4th) 19 (O'Shea).

Counsel further refers this Office to the more recent decision of Arbitrator Jackson in **Re St. Paul's Hospital and H.E.U.** (2001), 96 L.A.C. (4th) 129 (Jackson) where the intersection of the duty of accommodation and the doctrine of termination for innocent absenteeism was considered. In that award the arbitrator commented, in part, as follows:

> The Employer did not dispute that at the time the grievor was terminated for on-culpable absenteeism he was disabled for the purpose of human rights legislation and it had a duty to accommodate him. This case involves the situation arbitrator Dorsey described in **Re Fording Coal Ltd. and U.S.W.A. Loc. 7884**:
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> > Little attention has been given to meshing the employer's duty to accommodate with the tests that the employer must meet to justify a non-culpable dismissal for innocent absenteeism that has rendered the employment relationship no longer viable. Both involve making a prognosis about the viability of a future employment relationship based on the employee's sustained attendance at productive work.
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> In my opinion the following approach is an appropriate one [to] take in a situation involving an employee's excessive innocent absenteeism, an employer's desire to terminate and the employer's obligation at law to accommodate a disability to the point of undue hardship. First, one should consider whether, absent the duty to accommodate, the employer has met the onus of justifying the non-culpable dismissal by establishing excessive absenteeism and the unlikelihood of regular attendance in the foreseeable future. If the employer has not met that onus, then an arbitrator need go no further and the dismissal cannot be upheld. It is only if the dismissal would be otherwise justified that it is necessary to consider the question of accommodation.
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> …
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> I have concluded that the Employer has established that Mr. Smeding's record for absenteeism was excessive and that it is unlikely now, and was unlikely at the time of termination, that he could regularly attend work in the reasonably foreseeable future. Mr. Smeding's absenteeism was due to a right shoulder pain syndrome, a medical condition that constitutes a disability which the Employer was obligated to attempt to accommodate. The Employer fulfilled that duty by offering the grievor a six-hour shift with modified duties as proposed by his doctor. Unfortunately the grievor rejected the Employer's proposal that I have found to be a reasonable one. Since the Employer's duty to accommodate has been discharged, the tests for establishing just and reasonable cause for terminating the grievor for non-culpable absenteeism have been met.

Reference was also made to **CROA 2239** and **SHP 284** as confirming the right of an employer to terminate an employee for innocent absenteeism. In particular, reference is made to the following comments of this Arbitrator in **SHP 234**, an award in a grievance between **Canadian Pacific Limited and the International Brotherhood of Firemen and Oilers**, dated November 23, 1989:

> It is generally accepted that for an employer to be entitled to invoke its right to terminate an employee for innocent absenteeism it must satisfy two substantive requirements, namely that the employee has demonstrated an unacceptable level of absenteeism as compared with the average of his peers over a sufficiently representative period time, and, secondly, that there is no reasonable basis to believe that his or her performance in that regard will improve in the future.

See also **Royal Alexandra Hospital** (1992), 29 L.A.C. (4th) 58 (Power).

I turn to consider the merits of the parties' competing submissions. Firstly, it should be stressed that this Office is impressed with the efforts at accommodation and the processes in furtherance of that obligation developed within the Company's administrative structures. Nor does the Arbitrator dispute the correctness of the law argued by counsel for the Company as it pertains to the right of an employer to close the file of an employee where the two-part test has been met under the doctrine of innocent absenteeism. The only qualification might be, as suggested by counsel for the Brotherhood, that boards of arbitration have confirmed that in some circumstances it is appropriate for the employer to give a degree of advance warning to an individual, particularly where his or her condition or pattern of absences might be susceptible to improvement by an alteration of personal habits or otherwise. (See, e.g., **Oshawa (City)** (1996), 56 L.A.C. (4th) 335 (Brandt); **Royal Alexandra Hospital** (1990), 10 L.A.C. (4th) 173 (Ponak); **Dennison Mines Ltd.** (1983), 12 L.A.C. (3d) 364 (Adams).)

With the greatest respect for the position advanced by counsel for the Company, and bearing in mind that there is little if any prior arbitral consideration of this issue, the Arbitrator has some difficulty with the position of the employer concerning the termination of persons to whom the duty of reasonable accommodation is owed. It is now well established that disabled employees are owed a duty of accommodation to the point of undue hardship, now entrenched in section 15(2) of the **Canadian Human Rights Act**. It is also well settled, through the decisions of the Supreme Court of Canada, that the duty of accommodation involves not only the employer, but also requires the active participation of the employee and his or her trade union (**Central Okanagan School District No. 23 v. Renaud** (1992), 95 D.L.R. (4th) 577, [1992] 6 W.W.R. 193, [1992] 2 S.C.R. 970). If a trade union has an obligation to be involved in the accommodation process, an obligation which may perhaps include making allowances under the provisions of its collective agreement, it must surely have a corresponding right of notice to participate in any significant decision affecting the employment status of a disabled employee who is subject to the duty of accommodation.

Some guidance can be obtained from the decision of a board of arbitration chaired by Arbitrator Devlin in **Re Abitibi-Price Inc., Iroquois Falls Division and Canadian Paper Workers' Union, Local 90** (1992), 31 L.A.C. (4th) 211 (Devlin). That case concerned the termination for innocent absenteeism of an employee absent for some four years by reason of a work-related injury. While the board found that the Company is entitled to terminate an individual in that circumstance for innocent absenteeism, and that it did not violate the **Ontario Human Rights Code**, it nevertheless found that termination was improper given the manner in which the Company proceeded. For the majority Arbitrator Devlin writes, in part, at pp. 215-16 as follows:

> The issue, then, is whether the Company was justified in terminating the grievor's employment on grounds of innocent absenteeism. In this regard, it has been held in numerous awards that an employer is entitled to terminate the employment of an employee who cannot attend work with reasonable regularity. For this purpose, consideration must be given both to the employee's past record of absenteeism as well as his prospects for regular attendance in the future.
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> In this case, there is no question that the grievor's past record reflects undue absenteeism and the evidence indicates that, in fact, the grievor was absent for a period of some four years prior to his termination in May of 1990. The length of the grievor's absence also suggests that there is little likelihood of regular attendance in the future. This is confirmed to some extent by the medical report introduced at the hearing which indicates that it is doubtful that he grievor will ever be able to return to his job as a pipe fitter. Although the report does not address the grievor's fitness to

> perform modified duties, even at the date of hearing, the union tendered no evidence to indicate that there were modified duties which the grievor was fit to perform.
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> The Union contended, however, that where an employee's absenteeism is the result of an industrial accident, different considerations ought to apply. In these circumstances, the union submitted that an employer is not free to terminate employment and, thereby, frustrate an employee's right to require the employer to accommodate his needs in accordance with the provisions of the **Human Rights Code**. In this regard, s. 16 of the **Code** imposes a duty to accommodate the needs of a handicapped person to the point of undue hardship so as to enable that person to fulfil the essential requirements of the position.
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> In this case, however, it is not alleged that the Company failed to accommodate certain needs identified by either the grievor or the union. Instead, the union appears to acknowledge that the requirement for an accommodation may only occur, if at all, at some point in the future or, in other words, some considerable period after the grievor's termination. In these circumstances, we cannot find that the termination was in violation of the **Code**. In the Board's view, there is nothing in the **Code** which would require the company to maintain the grievor in employment given he had been absent for a lengthy period and there was no reasonable prospect of his return to active employment in the foreseeable future.
>
> Nevertheless, there is an aspect of the action taken by the Company which is of concern to the board. In this regard, the evidence indicates that in deciding to terminate the grievor's employment, the company took into account information obtained from the Workers' Compensation Board to the effect that the grievor was not co-operating in a program of rehabilitation, nor was he interested in pursuing modified duties. In fact, it was the company's understanding that the grievor did not intend to return to active employment until such time as he was fit to perform his job as a pipe-fitter. This understanding was also consistent with a statement made by the grievor some time after his accident in late 1986. Thereafter, the company maintained that his failure to undergo rehabilitation or to pursue modified duties could detrimentally affect his continued employment. Mr. Faubert acknowledged, however, that had the grievor been participating in a program of rehabilitation in May of 1990, this may have affected the company's decision to terminate his employment. Furthermore, it is apparent that the company decided not to terminate the employment of another employee, Mr. Liznick, primarily because he was undergoing rehabilitation
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> At the time of his termination, the grievor was an employee with more than 20 years' service who lived in a small community in which the Company is the major employer. In the circumstances, the board finds that the company was not entitled to terminate the grievor's employment without advising him of its position and, in particular, of the consequences of his failure to undergo rehabilitation. For this reason, we direct that the grievor be reinstated to employment. …

It appears from the foregoing that the Board considered that some degree of advance notice was appropriate. In a separate addendum the union nominee, D.C. Mayne, added the following personal observations at p.217:

> The lack of required communication between the grievor and the company has, in my respectful view, rendered much of the presumed status of the grievor's situation stale. In order to update that information, the grievor and the union must be involved. That involvement must be sincere and disclosure of change in corporate attitude must be up front.
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> In order for the necessary discussions to be proper and full discussions, it is my view that they should take place outside of the context of an overhanging discharge. They certainly cannot take place within an arbitration hearing. Positions should not be entrenched prior to going into those discussions. The grievor needs to consult his doctor, his family, his union, his lawyer and indeed his own conscience to properly respond to the new corporate attitude. It is not right for the company to discharge the grievor and then make the inquiry to see if they were premature.

This Office accepts that it may, in the proper circumstance, be appropriate for an employer to terminate an employee for innocent absenteeism, even though that individual may be disabled and be owed a duty of reasonable accommodation. In that circumstance, however, procedure is of the essence. As part of the continuing duty of accommodation it is essential that the employer make all reasonable efforts to verify, prior to the point of discharge,

whether the person in question can be accommodated. Given the decision of the Supreme Court of Canada in **Renaud**, that inquiry necessitates reasonable notice to the employee and to his bargaining agent.

Nor is that requirement necessarily burdensome. In some cases it may involve no more than simple verification that there is little or no change in the individual's condition and little prospect for any significant change in the foreseeable future. However, that communication with the employee and his or her union is important not only to the extent that conditions may have changed for the employee. There may also have been changes within the workplace, whether by the introduction of new technology, different procedures, new vacancies or otherwise, such that the ability to accommodate the individual may have changed since his or her case was last considered. These are not theoretical considerations, as is amply demonstrated in the case at hand. The Company's own brief to the Arbitrator reflects that in fact three of the employees whose files were closed objected, and eventually were returned to active employment, with appropriate accommodation. I am satisfied that in such a circumstance, as a matter of law, the proper course is not for the Company to discharge the employee and then make the inquiry as to whether their action was correct, but to give the appropriate notice in advance. That approach is also more in keeping with the collective bargaining regime to the extent that some individuals may be less able than others to advocate for themselves, particularly where their bargaining agent has been given no notice of their termination and no meaningful opportunity to engender the three party discussion about possible accommodation mandated by the courts.

The foregoing observations obviously do not stand for the proposition that a disabled employee can never be terminated for innocent absenteeism. This award merely confirms the fact that the disabled employee is, as the Brotherhood argues, entitled to a duty of reasonable accommodation, to the point of undue hardship, as long as he or she remains an employee. Termination can therefore not occur unless it can be demonstrated at the point of termination that reasonable accommodation to the point of undue hardship is still not possible, and that there is no reasonable basis to believe that the employee will be able to return to meaningful service in the future.

The grievance is therefore allowed. The Arbitrator finds and declares that the Company was not entitled terminate the employment of any employees who were disabled within the meaning of the **Canadian Human Rights Act**, without first providing to the employees and to the Brotherhood reasonable notice of the Company's intention, affording both of them the opportunity to participate with the Company in a consideration, at that time, of whether a return to work, with or without accommodation, was then possible. Following proper notice, where it can be shown that such a return to work is not possible at that time or likely in the future, the employer will be entitled to close the employment file of the individual concerned.

With respect to any further remedy beyond the foregoing declaration, the Arbitrator notes the agreement of the parties at the hearing with respect to the fact that each of the cases in question must be considered on an individual basis. With that in mind, the matter is remitted to the parties for the purposes of identifying those employees to whom the statutory duty of accommodation is owed, so that the parties may engage in the necessary discussion with respect to the possibility of accommodated employment for those individuals. Should the parties be unable to agree on any aspect of the possible accommodation of any person so identified, the Arbitrator retains jurisdiction for the purposes of resolving any such disputes, or any other aspect of the interpretation or implementation of this award.

June 25, 2003

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