

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3440

Heard in Edmonton, Tuesday, 13 July 2004

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Dismissal of B.J. Zalkowsky.

UNION'S STATEMENT OF ISSUE:

Brad J. Zalkowsky returned to work under the terms and conditions set out by the Arbitrator in *CROA 3308*.

Since returning to work, Mr. Zalkowsky's seniority only allows him to work as a conductor rather than as a locomotive engineer, as he had done previously. The conductor's work is more physically demanding than he had performed as an engineer and, as a result, has aggravated a back condition, which the Company was previously aware of. This has caused Mr. Zalkowsky to take medication under medical direction. Mr. Zalkowsky is not permitted to work while under the influence of this medication. Documents regarding this from Mr. Zalkowsky's doctor have been provided to the Company, but the Company will not accept this as a mitigating factor instead determining that any absence, even those while under a doctor's care, must be factored in when calculating Mr. Zalkowsky's attendance as outlined in *CROA 3308*.

The Union contends that the failure to consider these absences as *bona fide* is discriminatory and contrary to the spirit of the arbitrator's award. The Union requests that Mr. Zalkowsky be reinstated and that he be made whole.

The Company disagrees.

FOR THE UNION:

(SGD.) R. A. HACKL

FOR: GENERAL CHAIRPERSON

There appeared on behalf of the Company:

- J. Hunder – Counsel, Edmonton
- R. Reny – Sr. Manager, Human Resources, Edmonton
- D. Brodie – Manager, Labour Relations, Edmonton
- T. Brown – Superintendent, Edmonton
- P. O'Connor – Operations Manager, Edmonton
- C. MacDonald – Witness

And on behalf of the Union:

- D. Ellickson – Counsel, Toronto
- R. A. Hackl – Vice-General Chairperson, Edmonton
- J. W. Armstrong – Vice-President, UTU-Canada, Edmonton
- Wm. Witwicky – Vice-Local Chairperson, Kamloops
- B. J. Zalkowski – Grievor

Resolved at the hearing through the mediation of the Arbitrator.