CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3476

Heard by conference call in Toronto, Tuesday, 22 March 2005

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

There appeared on behalf of the Company:

J Coleman	– Counsel, Montreal
M. Henry	– Counsel, Vancouver
Roh Reny	– Manager, Industrial Relations, Edmonton
J. Torchia	– Director,Labour Relations, Edmonton

And on behalf of the Union:

S. Moore	– Counsel, Vancouver
M. A. Cchurch	– Counsel, Toronto
D. Shewchuk	– General Chairman, Edmonton
R. E. Lee	– Grievor

INTERIM AWARD OF THE ARBITRATOR

The Union seeks an adjournment of the discipline grievances which the Company filed *ex parte* in this Office to be heard in April of 2005. The Union submits that the same disputes are scheduled to be heard by the Canada Industrial Relations

Board and submits that the arbitration of these grievances should be adjourned pending the outcome of the CIRB proceedings. The Company does not agree to the adjournment. It is therefore necessary for the Arbitrator to determine whether an adjournment is appropriate in the circumstances.

Each of the disputes referred to this Office for arbitration was previously referred to the CIRB by the Union in the form of unfair labour practice complaints. The complaints, which correspond to the six disputes filed by the Company in this Office, concern discipline imposed on a number of occasions between October 31, 2003 and November 19, 2004 resulting in the discharge of the grievor, Locomotive Engineer Robert Lee of Vancouver. The complaints to the CIRB allege that Mr. Lee, whose is local chairperson of the Union, was disciplined, at least in part, by reason of anti-union *animus*, contrary to the provisions of the **Canada Labour Code.** The CIRB has seized jurisdiction of the complaints and has scheduled hearing dates between April 4 and April 8, 2005. The grievances filed in this Office by the Company are scheduled to be heard the following week, on Thursday April 11.

Counsel for the Company submits that the general policy of the CROA&DR should apply. He cites the guidelines which provide, in part:

> In all but the most extraordinary of circumstances, postponements or adjournments will not be granted except with the agreement of both parties to a dispute.

Counsel maintains that there is no reason that the grievances cannot be heard on their merits with respect to the issue of just cause. He questions the suggestion of counsel for the Union that it is unduly burdensome to prepare for parallel hearings before two separate tribunals in successive weeks. He submits that the Union’s motion for adjournment may be motivated by an attempt at forum shopping, and that on the whole the case does not disclose extraordinary circumstances. He suggests that in fact the proceedings before the CIRB might benefit from a determination of these grievances by this Office.

Counsel for the Union does submit that the preparation of a number of briefs for submission to this Office in a time which coincides with the preparation of complex hearings before the CIRB is unduly burdensome. More fundamentally, she questions the value of proceeding to hear the grievances in this Office when the decision by the CIRB, should the complaints succeed, could render the arbitration proceedings moot. Counsel for the Union argues that, to the extent that the complaints before the CIRB as well as the grievances filed in this Office allege an unfair labour practice, the matter is better determined, at least at first instance, by the specialized statutory tribunal primarily charged with dealing with those kinds of issues. Finally, as part of her submission, counsel for the Union communicates the undertaking of the Union that no claim in respect of compensation for lost wages or benefits will be made before this Office for the period of time attributable to the adjournment, until such time as the CIRB has ruled.

Having considered the submissions of the parties, the Arbitrator is satisfied, upon a balancing of interests, that this is an appropriate case for an adjournment. Firstly, it would appear that before the Arbitrator the Union would challenge the just cause of the discipline assessed against Mr. Lee, at least in part, by an allegation that the Company was motivated by anti-union sentiment directed at the grievor. It would therefore be difficult for this Office to deal fully with the merits of the grievances without considering evidence and submissions going to violations of the **Code**, issues which are clearly to be heard and determined by the CIRB. To the extent that the CIRB will commence its proceedings before the hearing of the grievances in this Office, the potential for conflicting decisions, something which I believe should be avoided, is very real. Additionally, as counsel for the Union stresses, should the grievor be successful in his complaints before the CIRB any further proceedings in this Office might arguably be unnecessary. In these circumstances it is less than clear that the parties should be compelled to litigate the same or very similar issues before two tribunals at the same time.

Of additional significance is the issue of potential prejudice to the Company. As noted above, the Union has undertaken to save the Company whole in respect of any claim for compensation for the period of the adjournment. For practical purposes, therefore, the Company will be in the same economic position in respect of these grievances as it would be in were they to be heard as scheduled in April of 2005. There is therefore no meaningful prejudice to the Company should the adjournment be granted. Conversely, there is potential prejudice to the parties if they are forced to

litigate in both venues at the same time, with the potential for conflicting decisions. Nor is this a situation where the passage of time is likely to cause a dimming of memories, given the focal impact of the testimony to be given before the CIRB in less than two weeks. Finally, even if one accepts that this is a case of concurrent jurisdiction, there are compelling policy reasons for deferring to the specialized tribunal established by Parliament to deal with unfair labour practice complaints (See, e.g. **Commission des droits de la personne et des droits de la jeunesse et al. v. A.G. Québec et al.** [2004] 2 S.C.R. 185).

For all of the foregoing reasons the request for adjournment is granted.

March 23, 2005

(signed) MICHEL G. PICHER
ARBITRATOR