

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3489

Heard at Montreal, Tuesday, 14 June 2004

concerning

VIA RAIL CANADA INC.

et

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

The Corporation refuses to compensate Mr. Laroche for his loss of earnings and benefits and other losses.

UNION'S STATEMENT OF ISSUE:

On February 27, 2002, Mr. René Laroche, while he was at work, was arrested by the Quebec Provincial Police at Palais Station in Quebec City. Mr. Laroche was charged with four counts of trafficking and of possession of drugs and pleaded not guilty to these charges. Following an investigation the Corporation suspended Mr. Laroche without pay, pending the decision of the Court concerning the charges made against him.

The Teamsters Canada Rail Conference grieved this decision of the Corporation, but the suspension pending the outcome of the charges made against Mr. Laroche was confirmed in *CROA 3311*.

On December 20, 2004, Mr. Laroche was acquitted by the Honourable Judge Rémi Bouchard of the Quebec Court of all charges. Following his acquittal and with the agreement of the parties, Mr. Laroche was returned to duty on January 21, 2005, without loss of seniority. A request was made to the Corporation that Mr. Laroche be returned to duty without loss of seniority and with compensation for all financial losses.

However, the Corporation refused to compensate Mr. Laroche for his loss of earnings, benefits or other losses incurred as a result of his suspension without pay.

FOR THE UNION:

(SGD.) R. LECLERC

GENERAL CHAIRMAN – VIA LINES EAST

There appeared on behalf of the Corporation:

- L. Béchamp – Counsel
- G. Benn – Labour Relations Officer, Montreal
- G. Sarazin – Senior Officer, Labour Relations, Montreal

And on behalf of the Union:

- D. L. Blouin – Counsel
- R. Leclerc – General Chairman, Grand-Mère
- R. Laroche – Grievor

AWARD

The Union asks the Arbitrator to order the compensation of the grievor for his loss of salary and benefits during the period of the administrative suspension to which he was subjected after criminal charges were brought against him. The Corporation submits that the subject of the grievance was resolved and that, in any event, this is not a case for payment to the grievor.

The Arbitrator finds it difficult to understand why the grievor would have a right to any compensation for wages in the instant case. As a general rule arbitrators consider that the right of an employer to impose an administrative suspension on an employee who faces a criminal charge must be judged on a case by case basis. In my opinion the same approach must be taken concerning the compensation of such an employee. Certainly many arbitrators find it difficult to see how, if the employer was justified in its decision to suspend the employee the latter should be compensated if he is found not-guilty at the conclusion of the process, perhaps after a long period of criminal proceedings. (See, for example, **Union internationale des travailleurs et**

travailleuses unis de l'alimentation et du commerce, section locale 501, et Scobus (1992) inc., division St-Hubert [2000] R.J.D.I. 335; D.T.E. 2000T-243 (Me Jean-Louis Dubé.)

In the instant case, the grievor was found not-guilty by the judgement of Justice Rémi Bouchard of the Court of Quebec on December 20, 2004. The judgement recognized that the grievor had close relations with a number of the other accused certain of whom were members or associates of the Hells Angels. He recounted the uncontested evidence that the grievor received at his home the payment of a large sum of money in cash, in a large bag which was delivered to him by a member of the Hells Angels, in exchange for some pills. In light of the evidence of the grievor that the pills in question were a legal substance, the judge came to the conclusion that a reasonable doubt had been raised and that Mr. Laroche ought to be acquitted of all charges against him.

On what principle of right must the Corporation compensate the grievor for his long period of absence from work to defend himself against these criminal charges? Is it the employer which must take the risk of the questionable conduct of an employee who deals with the Hells Angels and receives bags of cash in exchange for pills at the door of his residence? In the award in **Re Ontario Jockey Club and Mutuel Employees' Association, Service Employees' International Union** (1977) 17 L.A.C. (2d) 176 Arbitrator Ross Kennedy rejected a request for compensation for a suspension similar to that in the instant case. As the charges concerned an accusation of operating an

illegal gambling house the arbitrator concluded that the legitimate interests of the employer justified an administrative suspension without compensation. In response to the argument of the union concerning the loss of income for the employee the Arbitrator wrote: "this grievor clearly permitted a person whom he knew to be a heavy gambler unrestricted use and access to his apartment premises without questioning the purpose of such use ... at best, the grievor's lack of judgement would appear to have made a significant contribution to the position in which he finds himself." The Arbitrator considers that this passage is an apt description of the circumstances in which the grievor found himself.

Counsel for the Union draws to the Arbitrator's attention the decision of the Supreme Court of Canada in **Cabiabman c. Industrielle – Alliance Cie d'Assurances sur la Vie** [2004] 3 R.C.S. 195. That decision is distinct in that the Supreme Court of Canada recognized, in the context of an individual employment contract, that an administrative suspension could not be without compensation. In that case it was a matter, from the outset, of a proceeding concerning discharge without just and sufficient cause. The Court recognized that the jurisprudence as far as collective agreements are concerned is different, without in any way ruling contrary to the arbitral decisions mentioned. This is not therefore a case of a judicial decision which speaks directly to the principles which apply in a case such as this one where the unionized employee has the advantage of a collective agreement and the right to file a grievance which can lead to his reinstatement, with to without compensation, based on the particular facts of the case.

In the first place, the Arbitrator accepts the contention that the claim in the instant case has already been decided. In **CROA 3311**, the arbitrator rejected the grievance of the grievor which sought to reverse, with compensation, the decision of the employer to suspend him without compensation while awaiting the outcome of the criminal charges brought against him. It involved the same union, the same employer, the same grievor and the same grievance. There is, therefore, no place to re-hear the same grievance.

Alternatively, for the reasons expressed above, the same outcome would be equally justified if it had not already been decided. Given the facts in the instant case I do not consider that there is any place to put on the back of the Corporation the high price of the doubtful judgement demonstrated by the grievor in the choice of his friends and his activities, the choices which clearly led to the necessity of putting him on administrative suspension to protect the interests of the Corporation, a company of high visibility which operates a very safety-sensitive company. At the end of the day the grievor is the victim of his own indiscretion.

For these reasons the grievance is dismissed.

June 20, 2005

(signed) MICHEL G. PICHER
ARBITRATOR