

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

CASE NO. 3531

Heard in Montreal, Tuesday 13 December 2005

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Failure to accommodate Tracy Stroud.

JOINT STATEMENT OF ISSUE:

Ms. Tracy Stroud of Edmonton, Alberta is, due to a work related injury, a medically restricted employee. She was originally accommodated as a switchtender in Edmonton in March of 1997, a position she continued to work until the switchtender positions were abolished in March of 1999.

The Union contends that since that time, and up until the present, Ms. Stroud has only been provided intermittent accommodated work and has suffered significant personal hardship as a result of the Company's failure to provide a suitable, long term accommodation.

The Union submits that the Company has failed to suitably accommodate Ms. Stroud. The Union requests that the Company be directed to make Ms. Stroud whole and find suitable accommodation.

The Company maintains that it has undertaken all reasonable efforts to accommodate Ms. Stroud and, as such, has fulfilled its obligation.

FOR THE UNION:

(SGD.) R. A. HACKL
FOR: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) K. MORRIS
FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Crossan – Manager, Labour Relations, Prince George
K. Morris – Manager, Labour Relations, Edmonton

And on behalf of the Union:

D. Ellickson	– Counsel, Toronto
B. Boechler	– General Chairperson, Edmonton
R. Hackl	– Vice-General Chairperson, Edmonton
T. Stroud	– Grievor

AWARD OF THE ARBITRATOR

The record discloses that on December 6, 1996, while employed as a train person, the grievor, Ms. Tracy Stroud, suffered a work-related injury to her left wrist/elbow which effectively became a permanent disability that made it impossible for her to perform the work of a trainperson or conductor. The Company initially accommodated Ms. Stroud by placing her in a position of switchtender, a position she retained until March 1999 when switchtender positions at Edmonton were abolished. She then elected to go on layoff status, and was thereafter recalled to intermittent service, including grass cutting in May of 2000 and United Way canvassing for a brief period in November of 2000.

Significantly, in January 2001 Ms. Stroud was placed in full-time work as a Workforce Coordinator in the Engineering Department. There is no dispute that that employment, which was largely administrative, was well within her medical limitations. The record indicates that the hours of work, which involved midnight shifts, and the nature of the work were not agreeable to Ms. Stroud. As of June 19, 2001 she went on sick leave, apparently suffering from stress from the position in question, part of it apparently due to the hours of work involved. It does not appear disputed that the Company subsequently contacted the grievor and offered to modify her assignment in the engineering department to working on days. However, she declined to return to work under that arrangement. It seems that thereafter Ms. Stroud took a two year course of

study leading to a certificate as a laboratory research analyst in mid-2004. There was little contact between herself and the Company during that time. Ultimately, in June of 2005, Ms. Stroud was placed into a clerical position in another bargaining unit, a position which she holds to this time.

In considering the foregoing chronology the Arbitrator is left with some difficulty as regards the merits of the grievance. The record does indicate that the Company made a number of efforts, over a period of years, to accommodate the grievor's condition. The duty of accommodation is not tantamount to a guaranteed insurance policy whereby an employee will be provided the job which he or she prefers. At one point Ms. Stroud was placed in an administrative position which was within her limitations. By her own admission she did not like the job she was given, and eventually left, claiming at the time a two month period of short-term disability for stress. Thereafter her contact with the Company was relatively spare, and while the Union filed a grievance on her behalf in 2001, that grievance was obviously not progressed to arbitration until the present time.

In the Arbitrator's view a telling factor in the case at hand is the undisputed fact that the grievor was offered an administrative position, a position which the Company was prepared to let her work on a day shift basis, as a means of accommodating her disability. Having worked in that job on a midnight shift basis, she nevertheless declined it and effectively walked away from further exploration of the accommodation process, save for filing her grievance. While it appears that she felt some stress from the administrative job, and took a brief medical leave of absence, there is no medical documentation before the Arbitrator to confirm that she would have been unable to return to that work, particularly when the Company offered her the same job on a day

shift basis from mid-August of 2001. It is significant that her own account of her stress is largely based on the demands of the midnight shift on her as a single mother.

In all of these circumstances the Arbitrator is not of the view that the Company failed in its obligation to accommodate the grievor's disability to the point of undue hardship. Ms. Stroud was offered a day shift, administrative job in August of 2001 which was well within her physical limitations. While that may not have been the job she felt most suited for, it was work which would reasonably have accommodated her disability. Bearing in mind that the Company had made various efforts to accommodate Ms. Stroud from 1996 through 2001, her decision to walk away from the work then being offered to her was, in my view, an effective frustration of the accommodation process. If she had no productive work thereafter, it was because she did not want to do the work being offered to her, not because the Company failed in its obligation of accommodation.

For all of the foregoing reasons the grievance must be dismissed.

December 20, 2005

(signed) MICHEL G. PICHER
ARBITRATOR