CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3550

Heard in Montreal Wednesday, 12 April 2006

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Circumstances surrounding the closure of Cindy Richards' employment file.

JOINT STATEMENT OF ISSUE:

On March 17, 2005, Ms. Richards received a letter dated February 28, 2005, advising her that she was recalled from laid off status and was to report to Vancouver. She immediately wrote back to the Company requesting an extension and describing her circumstances, explaining that it would be an extreme hardship to have to go to Vancouver.

Ms. Richards received a letter from the Company dated April 15. This letter did not comment on her earlier correspondence and informed Ms. Richards that if she did not advise the CMC by May 5 that she would be reporting to Vancouver, her seniority would be forfeited. Ms. Richards sent several more letters to the Company, none of which were responded to. She then received a letter dated June 27, 2005 stating that if she didn't report to Vancouver by July 2, her employment file would be closed.

The Union contends that, contrary to the collective agreement, the Company has: acted unreasonably by not granting Ms. Richards a leave of absence; failed to reasonably consider Ms. Richards' reasons for not reporting for duty in Vancouver; and dismissed Ms. Richards without an investigation.

The Union requests that Ms. Richards be reinstated without loss of seniority; made whole for all losses and be granted a leave of absence.

The Company disagrees.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) B. R. BOECHLER	**(SGD.) K. MORRIS**
GENERAL CHAIRPERSON	**MANAGER LABOUR RELATIONS**

There appeared on behalf of the Company:

K. Morris	– Manager, Labour Relations, Edmonton
J. Torchia	– Senior Manager, Labour Relations, Edmonton

And on behalf of the Union:

D. Ellickson	– Counsel, Toronto
B. R. Boechler	– General Chairperson, Edmonton
R. A. Hackl	– Vice-General Chairperson, Edmonton
R. Thompson	– Local Chairperson, Jasper
C. Richards	– Grievor

AWARD OF THE ARBITRATOR

The parties are agreed that the facts in the case at hand are, for all practical purposes, largely indistinguishable from those which were considered by this Office in the companion case, **CROA&DR 3549**. The grievor, who lives in Jasper Alberta, has a seniority date of May 1992. She has lived as a single parent since her separation in 1997 and eventual divorce in 2001. She has primary residential custody of two children aged 11 and 12.

According to the Company she was laid off in November of 1997. From that time until 2001 she worked on the Jasper emergency board. Subsequent to November 2001 her medical and rules cards expired. She did not work from November 2001 until June of 2005, and indeed could not work with expired medical and rules cards. Eventually she obtained new rules cards and medical clearances and started working again in June of 2005.

June of 2005 she stood as a laid off employee at Jasper, doing occasional work from the Jasper emergency board. Earlier in her layoff, on March 17, 2005 she had received a registered letter advising her that she was being recalled and required to protect a shortage of yard employees in Vancouver. After she requested a thirty day extension pursuant to article 115 of the collective agreement she received a further letter indicating that the Company wished to know whether she would be reporting for work in Vancouver by May 6, 2005. She was then advised that the failure to so report would result in the forfeiture of her seniority and employment.

On May 1, 2005 she wrote a letter to the Company's Senior Manager, Labour Relations at Edmonton, explaining the circumstances of her family obligations asking "… that CN grant me a compassionate leave of absence, from protecting the shortage in Vancouver, due to my legal requirements to remain in Jasper." The foregoing refers, in part, to her court ordered obligation to maintain her children within the jurisdiction of Alberta, subject to the granting of an exception by a judge, upon appropriate notice. On June 22, 2005 the grievor was advised by the Crew Management Centre that she must nevertheless report to Vancouver by July 2, 2005. She was similarly advised in a letter dated June 27, 2005 from the Manager – Operations of the Crew Management Centre at Edmonton. On July 2, 2005 the grievor wrote to the Company's Senior Vice-President for Western Canada asking for compassionate relief. Finally, on July 4, 2005 the Company wrote to the grievor advising her that in accordance with articles 115 and 148 of the collective agreement her seniority rights were forfeited and her employment file was closed. In effect, she was terminated.

The Union submits that the Company unreasonably denied the grievor a special leave of absence, and that it failed to properly apply articles 115.4 and 148(11)(d) of the collective agreement as she did provide a "satisfactory reason" for not reporting to work at Vancouver. Finally, the Union submits that the current termination should be declared null and void by reason of the Company's failure to conduct a disciplinary investigation pursuant to the provisions of article 117.1 of the collective agreement.

For the reasons more exhaustively explained and expressed in **CROA&DR 3549**, the Arbitrator cannot accede to the position advanced by the Union. There is nothing in the collective agreement to suggest that the Company must carefully weigh the personal and family obligations of an employee, and that those obligations might effectively trump the cornerstone rights and obligations relating to seniority and the order of recall of employees in a bargaining unit as provided for under the collective agreement. There is no responsible basis upon which a board of arbitration can effectively conclude that an individual's personal circumstances not only explain their failure to report for work upon recall, but excuse them indefinitely, perhaps for years, from the same work obligations as apply to other employees, including other single parents, or married parents with comparable family obligations, who do not have access to the same treatment under the collective agreement. In effect, what the grievor requests would be tantamount to an amendment of the collective agreement by the Arbitrator and the creation of a form of super-seniority based on personal circumstances. For reasons touched upon in the prior award, there is nothing in the collective agreement which would contemplate the possibility of any such result. On the contrary, the Arbitrator is bound to apply the seniority and recall provisions of the

collective agreement as fashioned by the parties themselves. In addition, it should be noted that the Union does not seek, through this grievance, relief for any alleged violation of the **Canadian Human Rights Act**.

Additionally, for the reasons expressed in **CROA&DR 3549**, the Company was under no obligation to conduct a disciplinary investigation and therefore did not violate article 117 of the collective agreement.

For the foregoing reasons the grievance must be dismissed.

April 20, 2006

(signed) MICHEL G. PICHER
ARBITRATOR