

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

CASE NO. 3577

Heard in Montreal, Tuesday, 12 September 2006

Concerning

CANADIAN NATIONAL TRANSPORTATION LIMITED

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND
GENERAL WORKERS UNION OF CANADA (CAW-CANADA)**

DISPUTE:

The termination of the standard contract and the consequent dismissal of Owner-Operator Charles Jury.

JOINT STATEMENT OF ISSUE:

By letter dated May 12, 2005, the Company notified the grievor that it was invoking Article 7.10(f) of the collective agreement to deem the standard contract between the Company and the grievor was terminated and (implicitly) that the grievor was dismissed. The cited ground for the dismissal was the grievor's conviction on November 4, 2004 on a charge of driving while impaired for an incident which occurred April 20, 2003.

The Union submits that there was no just cause for dismissal and that the grievor ought to have been allowed to use a replacement driver where necessary. The Union has requested reinstatement and that the grievor be made whole for the period since May 12, 2005, when he was first suspended.

The Company denies the Union's contentions and claims.

FOR THE UNION:

(SGD.) A. ROSNER
NATIONAL REPRESENTATIVE

FOR THE COMPANY:

(SGD.) D. S. FISHER
DIRECTOR, LABOUR RELATIONS
FOR: CNTL

There appeared on behalf of the Company:

A. deMontigny – Sr. Manager, Labour Relations, Montreal
J. Deschamps – Director, CNTL

And on behalf of the Union:

- | | |
|-------------------|-------------------------------------|
| A. Rosner | – National Representative, Montreal |
| C. Rainville | – Regional Representative, Montreal |
| Me. Julien Dionne | – Witness |
| C. Jury | – Grievor |

AWARD OF THE ARBITRATOR

The record discloses that on April 27, 2005, the grievor submitted to the Company a copy of his driving record. That notification confirmed that his driving licence had been suspended by reason of a conviction for the impaired driving of his personal vehicle. The Company then invoked the provisions of article 7.10(f) of the collective agreement and articles 8.2 and 7.3 of the owner-operators' standard contract to terminate Mr. Jury's standard contract of owner-operator service.

At issue in the case at hand is the operation of article 7.10(f) of the collective agreement which reads as follows:

7.10 Owner-operators will forfeit their seniority and their services will be dispensed with for any of the following reasons:

...

(f) Forfeiture of any permits, licences or certificates required under federal or provincial regulations that renders the owner-operator ineligible or unable to fulfil the requirements of the standard contract. However, if an owner-operator should have his permit, license or certificate revoked, such owner-operator will be allowed to designate a replacement driver as defined in article 10 pending the final outcome of the legal case. **If the owner-operator is found guilty, his contract will be immediately terminated.** Should the owner-operator be found legally not guilty of the charge(s), then such owner-operator will be allowed to return to work without forfeiting his seniority.

[emphasis added]

The record discloses that the grievor was found guilty of the violation of section 253(a) of the **Criminal Code**, for operating his personal vehicle while impaired by alcohol, on November 4, 2004. Four days later, his counsel filed notice of appeal and on November 12 the Court set January 28, 2005 as a time for the purposes of setting a date for the hearing of the appeal. Apparently, by reason of a misunderstanding, neither the Crown nor counsel for the grievor appeared in court on January 28, 2005, as a result of which the appeal was dismissed. While Mr. Jury had some discussion with his counsel respecting the possibility of re-opening the case, he ultimately decided to accept the verdict. It would seem that at that time there was very little time remaining before which he would be able to return to driving, albeit with a breathalyser controlled locking device on his vehicle.

The Union's representative submits that the Company misapplied the provisions of article 7.10(f) of the collective agreement. He argues that the intention of that provision is to make a distinction between the forfeiture of a driver's licence, which he argues is the full permanent loss of such a permit, and the suspension or revocation of the licence, dealt with separately within the article. Counsel submits that the intention of the article is that an employee whose licence is temporarily suspended is not to be terminated.

The Arbitrator cannot agree. While admittedly the drafting of article 7.10(f) is less than lucid and elegant, the general thrust of the article is sufficiently clear. The Arbitrator is satisfied that on the whole there can be no doubt but that the article stands for the

proposition that if an owner-operator is charged with an offence which initially results in the suspension or revoking of his or her licence, and is subsequently found guilty of that same offence, the contract of the individual "... will be immediately terminated." The contrary result, of course, comes to bear should the individual be found not guilty.

Whatever the sequence of events and the understanding of the grievor, the overarching fact remains that Mr. Jury was charged with impaired driving in the operation of his personal car. The nature or identity of the vehicle involved is of no consequence for the purposes of article 7.10(f). The sole interest of that article is that the employee maintain valid ongoing permits, licences or certificates necessary for him or her to fulfil the requirements of the standard contract. Most significantly, the article is clear that an individual found guilty of an offence which goes the holding of such permits, licences or certificates is to have his or her contract immediately terminated.

It is trite to say that the Arbitrator is not at liberty to amend or ignore the provisions of the collective agreement. In my view, to accept the argument made on behalf of the grievor by the Union would effectively do precisely that. The grievor was charged with an offence, the consequences of which went to the loss of his driver's licence, an obvious condition for the fulfillment of his contractual obligations. He was found guilty and abandoned his appeal against conviction. Following that event the Company terminated his contract. I am satisfied that it did so in conformity with the provisions of article 7.10(f) of the collective agreement, and that no violation of its terms is disclosed.

For these reasons the grievance must be dismissed.

September 20, 2006

(signed) MICHEL G. PICHER
ARBITRATOR