

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

CASE NO. 3597

Heard in Montreal, Wednesday, 13 December 2006

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION**

EX PARTE

DISPUTE:

Use of Company Police to conduct investigations into alleged violations of the collective agreement.

UNION'S STATEMENT OF ISSUE:

In June 1999, a grievance was filed that objected to the use of Company police officers for the purpose of investigating alleged violations of Article 21.8 and Appendix B-1 of Agreement 4.1. None of the employees questioned by the Company police officers were provided with prior written notice and none were allowed Union representation.

The Union contends that: **(1.)** Article 18.2 of the collective agreement provides safeguards for employees when investigations are conducted. One of the most important of these is the right to representation. Another is the receipt of prior written notice. The procedure followed by the Company in this case deprived the employees involved of both these rights. **(2.)** The CP Police constitutes a fully authorized, statutorily created constabulary. As such, it is improper for the Company to utilize these peace officers as a tool in the investigation of alleged violations of the collective agreement. **(3.)** The Company's actions were in violation of article 18 of Agreement No. 41 in general and Article 18.2 in particular.

The Union requests that: **(1.)** it be declared that the Company's actions violated the collective agreement and infringed the rights of the workers involved; **(2.)** it be ordered that any and all information gathered in the manner described above be forever disallowed in any labour relations forum; **(3.)** it be ordered that any discipline assessed on the basis of the information acquired be rescinded and stricken from the relevant employee's record; and **(4.)** it be ordered that any employee who lost wages, benefits or seniority as a result of this matter be fully compensated therefore.

The Company denies the Union's contentions and declines the Union's request.

FOR THE UNION:**(SGD.) WM. BREHL**
PRESIDENT

There appeared on behalf of the Company:

M. Moran	– Labour Relations Officer, Calgary
A. Azim	– Labour Relations Officer, Calgary
S. Seeney	– Manager, Labour Relations, Calgary
R. Laroche	– Superintendent, Eastern Region
G. Belyea	– Constable, CP Police

And on behalf of the Union:

Wm. Brehl	– President, Ottawa
D. Brown	– Counsel

AWARD OF THE ARBITRATOR

The Union grieves the interrogation of a group of employees by CP police officers. Specifically, the Union asserts that employees were approached and interrogated by CP police officers concerning the manner in which travel claims were being made. It is common ground that no Union representation was afforded to the employees who were interviewed by the police. As indicated in the *ex parte* statement of issue, the Union contends that the Company violated the investigative procedures established under the collective agreement, including the right to be represented by a Union representative in the course of a disciplinary investigation. The Company maintains that there was no violation of the collective agreement as the investigation was criminal in nature, in furtherance of the duties and obligations of CP Police as peace officers, as mandated under the provisions of the **Canada Transportation Act**, S.C. 1996, c. 10.

The facts pertinent to the grievance are not in substantial dispute. In the spring of 1999 the Company received information to the effect that certain employees were making fraudulent claims with respect to travel expenses. Specifically, it was asserted that track maintenance employees were using fictitious home addresses to inflate the expense monies which would be paid to them for travel in British Columbia.

It does not appear disputed that on or about June 21, 1999 Sergeant Sikomas and Constable Glen Belyea of the CP Police administered a ten part questionnaire to a number of employees concerning the making of inappropriate expense claims for weekend travel by employees on maintenance gangs in British Columbia. Constable Belyea, who attended at the arbitration hearing, explained the reason for the investigation. He relates that a supervisor provided to him information indicating that some employees were using false residences to fraudulently claim travel expenses in relation to weekend travel. He maintains that the information so provided gave an indication of their being probable grounds to conclude that criminal activity was being engaged in. It is on that basis, he explains, that he and Sergeant Sikomas went forward to interview employees. He relates that, as might be expected in a criminal investigation, it is not the policy of the police to allow interviewees union representation when they are being questioned. He also stressed that the interview was, in any event, voluntary and that the persons who were spoken to were under no obligation to answer.

Constable Belyea further relates that in his view the information gathered did disclose that criminally fraudulent expense claims were being made by one or more employees. He goes on to explain, however, that when the totality of the material

gathered was presented to the Crown Attorney's office, it was decided that the evidence was not of a quality sufficient to proceed with criminal prosecution. In the result, no charges were laid and, it may be added, no employees were separately investigated under the disciplinary provisions of the collective agreement, and no one was ultimately disciplined.

The Union maintains that what transpired was essentially an abuse of police authority, with a supervisor using the CP Police as a means of gathering information in respect of a possible violation of the provisions of the collective agreement. The Union's representatives strenuously argue that any possible violation of the collective agreement is a matter that should be dealt with exclusively under the investigatory provisions of the collective agreement, and in particular section 21.8 and Appendix B-1 which deal with travel expenses, and section 18.2 of the collective agreement which governs the manner in which disciplinary investigations are to held, including the right of notice and Union representation. In support of its position the Union draws to the Arbitrator's attention a number of prior awards of this Office, including **CROA 280, 669** and **1538**.

It is true that this Office has recognized that it would be inappropriate for the Company to make improper use of its police force for the purpose of gathering information which could otherwise properly be gathered through the normal course of a disciplinary investigation conducted pursuant to the terms of the collective agreement. In **CROA 280** the Company investigated the alleged theft of some watches. It appears that the grievor in that case was instructed to report to the Company's police force as a

result of which he was interrogated with respect to the alleged thefts. In the specific circumstances of that case the Arbitrator found that the Company had in fact improperly avoided the investigatory provisions contemplated within the collective agreement. The decision reads, in part:

While the action of the company's police in this case was not the action of the industrial relations department, or of any of the operating departments of the company, it was nevertheless quite clearly the act of the company itself. In fact, the company required Mr. Kriticos to attend for questioning, and the company did question him, in connection with what was obviously an "alleged irregularity". Section 24.2, in my view, quite clearly addresses itself to the rights of employees in such circumstances, it is not open to the company to evade its requirements by failing to formulate the charges which it is in fact investigating. An employer may indeed fall upon an employee to account for suspicious circumstances: **Rexall Drug**, 18 LAC 342; in this case, it may well have been that the employee's failure to come forward and explain could be held against him. Quite clearly, however, what was done here goes well beyond the type of day-to-day query respecting an employee's work or conduct which is a normal part of industrial life, and could not be said to constitute an "investigation" as the term is used in Article 24.2. For an example of such a normal inquiry, not requiring compliance with Article 24.2, see **Case No. 279**.

Article 24.2 provides certain safeguards for employees being investigated in connection with alleged irregularities. One of the most important of these is the right of representation. The procedure followed by the company in this case deprived the employee of that right at the time when it was most important to him. In carrying out this investigation in the manner it did, while the company's officers may have been exercising their powers under the **Criminal Code** or the **Railway Act**, the company was in violation of its obligations under the collective agreement. In this connection I must, with respect, express my disagreement with what is said in the Award of Mr. Charles O'Connor, Q.C., dated November 7, 1967, in an arbitration between the company and the Brotherhood of Railway and Steamship Clerks. It was said there that the provisions of the collective agreement equivalent to those of Article 24.2 of the agreement before me did not apply to investigations carried out by the railway police. No doubt there are many functions to be carried out by the railway police that are not at all inhibited by anything contained in the collective agreement. But the provisions of Article 24.1 impose certain obligations on the company with respect to investigations. Whether the company acts through its police officers or otherwise, it has subjected itself to the terms of the collective agreement, and is bound by them.

For the foregoing reasons, it is my conclusion that the grievance must succeed.

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In contrast, in **CROA 669** this Office upheld the regularity of a Company police officer executing a search warrant at the home of an employee. It was there held that the search of the grievor's home was properly a criminal investigation, and not a disciplinary investigation as contemplated within the terms of the collective agreement.

In **CROA 1538** the parties were concerned with an investigation concerning the misappropriation of funds from the Windsor Station ticket office. It was there held that the interview of an employee by CP police investigators was not, as the union alleged, a disciplinary investigation in violation of article 27 of the collective agreement of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees there under consideration. However, in that award the Arbitrator commented, in part:

This is not to say that the Company ought to be allowed to exploit its police force for untoward purposes. It cannot be permitted to camouflage a police investigation for disciplinary purposes. The Company ought not to be seen to abuse the favoured status extended it by Parliament of applying its own police for improper purposes. And it is in this context that I have interpreted **CROA 280**. In that case, as I understood the decision, because there was no criminal investigatory purpose to the police role in its dealing with the grievor, it was ruled that the Company was duty bound to invoke the procedural safeguards for a disciplinary investigation contained in the collective agreement.

The Arbitrator has no reason to differ from the views expressed in the above quoted passages. It would plainly be inappropriate, and arguably an abuse of process, for line supervisors to attempt to use police investigators for the investigation of activities which are not criminal, but would merely involve a possible violation of the collective agreement or actions which would be properly subject to discipline. It must, however, be recognized that some activities might straddle the line, being both

violations of the collective agreement or conduct deserving of discipline on the one hand, and criminal offences on the other hand. There obviously can be no impediment to the police force of the Company investigating criminal activity merely because that same activity might separately be the ground of discipline or a finding that there has been a violation of the collective agreement.

In the case at hand the Arbitrator is satisfied that no violation of the collective agreement is disclosed. I find the evidence of Constable Belyea to be candid, straightforward and compelling. He states that he was advised of alleged conduct by some employees which extended to using fictitious home addresses for the purposes of making false expense claims against the Company on a repeated and systematic basis. As he indicated, such conduct would constitute fraud under the **Criminal Code of Canada** which could be the subject of charges before the courts. It was in respect of that issue that he commenced his investigation, an investigation which included meeting with a number of employees and asking them questions about possible irregularities in the making of expense claims. It appears to the Arbitrator that the method followed by Constable Belyea and Sergeant Sikomas was consistent with normal and appropriate police practice and, most importantly, was directed solely to determining whether there was or was not criminal activity which could form the basis of formal charges and prosecutions. As noted by Constable Belyea, in his view there was criminal fraud, albeit in its discretion the Crown judged that it would not be fruitful to proceed with charges.

While the Arbitrator appreciates the Union's concerns for precluding the abuse of police authority, I have substantial difficulty seeing how such an abuse can be asserted

on the facts of the case at hand. To the extent that the Union's position would effectively preclude a police investigation whenever the subject of that investigation might also involve an interpretation of the collective agreement, the ability of the Company's police force to act on what are also allegations of criminal conduct would be unduly circumscribed. I can see no basis to conclude that there was any abuse in the case at hand or that the CP Police were in any way prevented from conducting the investigation which they did. The fact that the initial information which came to their attention was from a line supervisor is of no consequence for the legitimacy of the investigation which they were entitled, if not obligated, to conduct with respect to possible criminal activity. If, for example, the case at hand concerned nothing more than differing interpretations of a mileage chart or the hours of duty as they might bear on the legitimacy of expense claims, the Union's case might be persuasive. That is not, however, the nature of what was being examined by the CP Police in the case at hand. The creation of a false residential address for the sole purpose of illegitimately extracting expense funds from an employer is, standing alone, criminal activity which can be subject to prosecution. That is the matter which occupied CP Police in the case at hand. This is not, in the result, an abuse of police process for the purposes of a matter which is purely disciplinary or in relation to the interpretation of the collective agreement.

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

December 18, 2006

(signed) MICHEL G. PICHER
ARBITRATOR