

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

CASE NO. 3630

Heard in Montreal, Wednesday, 12 September 2007

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

RAIL CANADA TRAFFIC CONTROLLERS

EX PARTE

DISPUTE:

Concerning the work place harassment of Rail Traffic Controller Todd Lammi.

COMPANY'S STATEMENT OF ISSUE:

It is the Company's position that this matter is not arbitrable since there has been no violation of any specific term(s) of the collective agreement and, in any event, Mr. Lammi's allegations of harassment were properly dealt with. Similarly, the period of absence from duty commencing January 28, 2006 to April 26, 2006 is solely accountable to the actions of Mr. Lammi and his application for Weekly Indemnity Benefits for the period in question did not meet required medical criteria to qualify for benefits.

Notwithstanding that the Company does not believe that this matter is properly brought before an arbitrator, the Company also denies any mishandling, failures or violations of the collective agreement or law.

UNION'S STATEMENT OF ISSUE:

On or about November 17, 2005, Rail Traffic Controller Todd Lammi was removed from his duties by Senior Manager Pat Orr and advised to go home. Due to this and other cumulative actions by the Company, Mr. Lammi filed a harassment complaint against Senior Manager Pat Orr.

The Union contends that Mr. Lammi has been unjustly dealt with and also that the Company failed to provide a safe and healthy workplace, a violation of s.124 of the *Canada Labour Code*. Also that the Company has failed to comply with its Diversity and Harassment-Free Environment Policy.

Mr. Lammi must be made whole for all lost wages and benefits between January 27 and his return to full employment.

The Company has denied this request.

FOR THE UNION:

(SGD.) J. RUDDICK
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. VEENIS
SENIOR MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Veenis	- Sr. Manager, Labour Relations, Toronto
P. Orr	- Manager, RTCC, Toronto
P. Lavoie	- Manager, Corridor Operations, Toronto
L. Lisi	- CN Constable

T. Lee – Manager, Corridor Operations, Toronto

And on behalf of the Union:

J. Ruddick – General Chairman, Burlington
 S. Brownlee – Vice-General Chairwoman, Edmonton
 D. Charbonneau – Accredited Representative, Toronto
 M. Boucher – Local Chairman, Montreal
 T. Lammi – Grievor

AWARD OF THE ARBITRATOR

The Arbitrator cannot sustain the Company's preliminary objection to the arbitrability of this grievance. Essentially, the Union alleges that the management style of supervisors in the Toronto Rail Traffic Control Centre is such as to create significant stress for employees, to the point of creating an unsafe workplace contrary to the Company's obligations under section 124 of the **Canada Labour Code**. On the basis of a decision of the Supreme Court of Canada in **District of Parry Sound Social Services, Administration Board v. Ontario Public Service Employees Union, Local 324** [2003] 2 S.C.R. 157, it is clear that it is within the jurisdiction of a board of arbitration, which draws jurisdiction from a collective agreement, to imply into that collective agreement the minimal standards of employment related statutes such as the **Canada Labour Code**. To put it differently, I would have no difficulty implying that the parties to the collective agreement at hand intend to administer their collective agreement in a manner fully consistent with the requirements of the **Canada Labour Code**. An allegation that the employer has not done so is, to that extent, arbitrable. As this Office has noted, however, an allegation that an employee has been unjustly dealt with is not, of itself, arbitrable. (See, e.g. **CROA 2939** and **CROA 2941**.) To that extent, and to that extent only, the Company's objection is well founded. I am satisfied that I do not have jurisdiction to determine whether the actions of the Company exceed the rights of management as those rights may be limited by the provisions of the **Code**.

The Union alleges that the manager of the Rail Traffic Control Centre in Toronto, Mr. Pat Orr, has exercised an abusive management style in respect of the grievor, to the point of harassment which culminated in Mr. Lammi being pressured out of the workplace following an incident on November 17, 2005. It appears that on that occasion Mr. Orr verbally corrected Mr. Lammi both at his workstation and subsequently during a meeting in Mr. Orr's office. The Union alleges that similar conduct continued after the incident, to the point that Mr. Lammi's health and his ability to perform his work was substantially undermined, as he experienced a loss of sleep and mounting anxiety. The record discloses that Mr. Lammi did leave work on a stress leave commencing January 27, 2006 and remained absent from work until April 25, 2006. He was denied sick leave benefits for that period by a decision of the insurance carrier, following the referral of Mr. Lammi to a psychiatrist at the instance of the Company. The psychiatrist's report found that the grievor did not suffer from any psychosis, but rather was experiencing symptoms of anxiety and depression by reason of "a significant occupational problem." He recommended that a mediator be assigned to deal with the relationship between Mr. Lammi and Mr. Orr.

The grievor also filed a complaint under the Company's harassment policy. That led to an investigation by Company Officer Terrence P. Gallagher, resulting in a report by Mr. Gallagher dated May 17, 2006 which concluded that there had not been any violation of the Company's harassment policy on the part of Mr. Orr. Mr. Gallagher nevertheless encouraged Mr. Lammi to speak with Mr. Orr, but was apparently advised that the grievor's Union representative had counselled against any such contact.

Essentially the Union seeks a declaration that the Company has violated section 124 of the **Canada Labour Code**, resulting in the absence of the grievor from work, which absence should be fully compensated in respect of wages and benefits lost. I have some difficulty with that request based on the evidence before me.

At best, the evidence would indicate that the grievor was not medically disabled by the difficulties he was experiencing at work with Mr. Orr, but that in the opinion of the psychiatrist he was experiencing some stress and depression by reason of problems surrounding that relationship. In the view of this Office, a finding of harassment, an extremely serious conclusion, must be based on substantial and well proved evidence, demonstrating an ongoing and repeated pattern of inappropriate and abusive behaviour. While that is the precise allegation made by the Union in the case at hand, the specific evidence placed before the Arbitrator is simply insufficient to make such a serious finding. It is also noteworthy that the office location of Mr. Orr has been changed since the events in question, and

that the Company has taken note of Mr. Lammi's concerns and has counselled Mr. Orr with respect to maintaining a professional management style.

For the above reasons the Arbitrator declines to make the declaration sought by the Union or to issue any directives with respect to compensation. While it may be unfortunate that the psychiatrist's suggestion of mediation may have been overlooked and not followed up, that is attributable in substantial part, I think, to the fact that the report was made to the insurer, and not to the Company, and that its contents were not in fact known in a timely way by the appropriate members of management. It is also unfortunate that the Union rejected any attempt at direct communication between Mr. Lammi and Mr. Orr.

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

September 17, 2007

(signed) MICHEL G. PICHER
ARBITRATOR