

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

CASE NO. 3676

Heard in Edmonton, Tuesday, 10 June 2008

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The Company's refusal to grant Mr. Desrochers' request for a leave of absence to attend a family educational retreat for the period of June 29, 2008 to July 11, 2008

JOINT STATEMENT OF ISSUE

On May 2, 2008 the Union made a request for an authorized leave of absence for the dates of June 29th thru July 11th under provisions of Article 17.2 of Agreement 5.1. In addition they asked that Mr. Desrochers be allowed to use this time as vacation so that he could receive pay for the time he is at the retreat. The request was denied by the Company on May 15, 2008 and the Union filed a grievance alleging that the Company could not deny the leave under provisions of 17.2 of the Collective Agreement. The Company denied the Union's allegations.

The Union requests an award that Mr. Desrochers is entitled to leave under the provisions of Article 17.2

FOR THE UNION:

(SGD.) D. OLSHEWSKI
NATIONAL REPRESENTATIVE

FOR THE COMPANY:

(SGD.) R. CAMPBELL
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

R. Campbell – Manager, Labour Relations, Winnipeg
D. Ellis – Manager, Customs, Winnipeg

There appeared on behalf of the Union:

D. Olszewski – National Representative, Winnipeg

AWARD OF THE ARBITRATOR

The grievor is a long-term employee. He started with the Company on May 10, 1983 and is currently employed as a Senior Waybill Representative in the Customs area of the Company's E-business and Transaction Center in Winnipeg. He began accumulating seniority in his current position in 1996. The grievor is one of twenty employees working in the Customs group whose responsibilities extend to all documentation relating to trans-border shipments. The Union alleges a breach of article 17.2 which reads as follows:

17.2 Employees it shall be granted free transportation in accordance with pass regulations, and leave of absence without pay to attend union and labour conventions and recognized labour educational seminars. Leave of absence for the president from each Regional Local from Council 4000 will be granted to attend Executive Council Board meetings up to two (2) times per year. The request for leave of absence must be provided by the local chairperson or designated Representative to the employees immediate supervisor with as much advance notification is possible, however no less than 72 hours prior to the commencement of the leave of absence.

The Company meets with Union representatives prior to February 1st each year, pursuant to article 9.21 of the collective agreement, to deal with vacation allotments for the upcoming year. The provision reads as follows:

9.21 Applications filed prior to February 1st, insofar as it is practicable to do so will be allotted vacation during the summer season and Christmas season, in order of seniority of the applicants, and unless locally arranged or failing such local arrangements, authorized by the Officer in charge, the vacation will be continuous. Applicants will be advised in February of dates allotted to them, and unless otherwise locally arranged, employees must take their vacation at the time allotted.

The parties also entered into a Local Vacation Agreement, pursuant to article 9.21, which applies to vacation for all employees of the E-business and Transaction

Center. Paragraph 10 of addendum #1 under their Vacation Agreement reads as follows:

10. Vacation requests for special circumstances will be provided on their own merit as operationally feasible. The local chairperson and the designated company officer must locally agree to all such situations. This item covers extraordinary situations only and excludes STD, or sickness etc.

The grievor, who stands at number 18 of 20 on the seniority list, selected the following blocks of days for his allotted five weeks of annual vacation leave for 2008: June 2-6; June 9-13; October 20-24; October 27-30; November 24-28. Those dates were approved by the Company the same day, February 19, 2008.

The Union runs three different two-week long family education programs in Ontario during the summer months. The notice for the program for 2008 was sent out on December 4, 2007 with a deadline of March 7, 2008. A condition of attendance at the family education program is that the employee must use two weeks of their vacation time. It is also worth noting the description of the program provided in the "CAW Education Programs", brochure which describes the two-week session as follows:

"During July and August our Family Education Center becomes a learning and recreation Center for our members and their families. In these two-week sessions, adults (members and their partners) discuss union and community issues (from the environment, jobs, to social programs to international issues. Toddlers, children and preteens participate in recreational programs run by child care workers and counsellors. Teenagers have their own specially-designed program which recognizes their interests, but also incorporates social issues and activism in their curriculum."

On May 2, 2008 the Union submitted a request on behalf of the grievor that he be allowed to attend the Family Education Program from June 29 to July 11, 2008. The Union also requested that the Company consider moving the grievor's vacation to coincide with the leave. The Company refused the request on May 15, 2008 citing

operational reasons. The Company noted in that regard that the grievor's absence would cause a shortage of manpower resulting from previously scheduled vacation arrangements with other employees. There are already three employees scheduled to be away on vacation from the grievor's work area from June 29 to July 11, 2008.

The Union's main argument is that the Company's refusal to allow the grievor's leave of absence request is a breach of article 17.2. The Union notes that the Local Chairperson was notified of the leave request within the stipulated 72 hours set out in article 17.2. It also submits, in reply to the Company's position set out in their Step 1 reply, that the article is mandatory and not directory. The Company's position is that there is no unfettered right for an employee to take a leave of absence and that the grievor's request was properly refused for operational reasons; that the language of the collective agreement is directory and not mandatory; that the grievor's request for a vacation leave to coincide with an unpaid leave of absence was properly considered and refused; and, that the Family Education Program is not a "recognized labour education seminar" that falls within the meaning of article 17.2 .

It should be noted at the outset that the specific request by the Local Chairperson of May 2, 2008 was for a leave of absence pursuant to article 17.2. This is not a request, nor has the Union characterized the May 2, 2008 correspondence as a request, for vacation as a result of special circumstances, pursuant to Article 10 of the Vacation Leave Agreement.

The key issue in the Arbitrator's view is the extent to which the grievor's proposal to attend the Family Education Program fits within the requirements of article 17.2. There is no real dispute that the grievor was not attending a "union and labour

convention[s]”, as that term is normally understood in the context of the labour community. A labour or union convention normally involves a meeting of the union membership gathered together to elect officers for the year and to deal with related union business. The threshold question is whether the Family Education Program can be considered to be a “recognized labour educational seminar”.

The name “Family Education Program” itself indicates that the CAW-sponsored summer program includes both parents and children. The name is a good descriptor of the program which has several components including seminars for parents on jobs and social issues; specialty programs for teenagers; and, recreational programs for younger children. The brochure also describes the two-week experience in the lead paragraph as a “... learning and recreation centre for our members and their families”.

It is difficult from the Arbitrator’s perspective to find that a two-week camp of this kind is what the parties had in mind when they refer to a “recognized labour educational seminar”. This is not to be taken as any criticism of the Union’s annual summer initiative. It is evidently an opportunity for Union members and their families to enjoy family time in a recreational setting and to discuss common social issues. It is different in nature, however, from what is normally understood by the term educational seminar.

A seminar is typically of shorter duration than two weeks with the focus resting on one or more specific topics, often for educational or training purposes. The focus of the two-week program sponsored by the Union is not one which centres on specific labour issues but rather involves a blend of general topics. Further, even if the two-week program was considered as a “labour educational seminar”, there is no evidence to support that it is a “recognized labour educational seminar”, such as an annual labour

conference, or a similar event where labour practitioners meet to hear leading individuals in the labour community speak on current topics of interest in the labour relations field. In my view, the Family Education Program does not fall within the meaning of term “recognized labour educational seminar” as found in article 17.2. The Union’s allegation that the Company breached this provision by refusing the May 2, 2008 request for the grievor to attend the Family Education Program is therefore rejected.

Having found that the request does not fall within the meaning of article 17.2, where the Union’s case rests, it is unnecessary to delve into the issue of whether the article is mandatory or directory. The grievance is otherwise dismissed.

June 12, 2008

(signed) JOHN M. MOREAU, Q.C.
ARBITRATOR