

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

**CASE NO. 3720**

Heard in Montreal, Wednesday, 14 January 2009

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**EX PARTE**

**DISPUTE:**

The closure of Dennis Yaeger's employment file due to his alleged withdrawal of services.

**UNION'S STATEMENT OF ISSUE:**

Dennis Yaeger was regularly working as a Yard Foreman in the Company's Winnipeg Terminal. On October 1, 2007, the grievor was contacted by Terminal Assistant Superintendent J. Thompson and directed to report for "Yardmaster refresher training".

Mr. Yaeger, who had been trained as a Yardmaster in 1999, had never worked a tour of duty as such and did not successfully complete a Yardmaster refresher training program in 2006. In fact, Mr. Yaeger had been advised by the Company to request his name be stricken from the Yardmaster seniority list, which he did.

Mr. Yaeger advised Mr. Thompson of this but, on October 1, 2007, was still directed to attend the refresher training. Mr. Yaeger did not attend and was not allowed to work his regular job as a yard foreman either. On November 9, 2007, an investigation was held regarding Mr. Yaeger's "unauthorized absence from work since October 1, 2007, to the present day."

Following the investigation Mr. Yaeger received a letter advising him that his employee file was being closed as a result of his wilful withdrawal of services.

The Union grieved the closure of Mr. Yaeger's file citing the circumstances noted above. The Union requests that the grievor be reinstated and made whole.

The Company disagrees.

**FOR THE UNION:**

**(SGD.) B. R. BOECHLER**  
GENERAL CHAIRMAN

There appeared on behalf of the Company:

K. Morris	– Manager, Labour Relations, Edmonton
D. VanCauwenbergh	– Director, Labour Relations, Edmonton
J. Cavé	– Counsel, Montreal
C. Wagner	– Observer

And on behalf of the Union:

D. Ellickson	– Counsel, Toronto
R. A. Hackl	– Vice-General Chairman, Edmonton
R. Barr	– General Chairman (former), Edmonton
D. Bolianaz	– Local Chairman, Winnipeg
D. Yaeger	– Grievor

### **AWARD OF THE ARBITRATOR**

It is not disputed that the grievor, Yardmaster/Conductor Dennis Yaeger, failed to attend a yardmasters' refresher training course scheduled in October of 2007. Indeed it appears that he had previously withdrawn from such a course in June of 2006 and returned to duty as a conductor. The record indicates that in fact he was first qualified as a yardmaster in the year 2000, although he never worked in that capacity.

Having regard to the materials filed and to the submissions of the parties the Arbitrator is satisfied that this is an appropriate case for a substitution of outcome, and that the grievor should be reinstated into his employment, albeit only as a conductor. The Arbitrator therefore directs that Mr. Yaeger be reinstated into his employment forthwith, without compensation for wages or benefits lost and without loss of seniority as a conductor. His return to work shall, however, be conditioned upon his accepting the forfeiture of his seniority as a yardmaster under collective agreement 4.2.

For the purposes of clarity it should be stressed that nothing in this decision derogates from the obligation of employees who wish to relinquish their seniority as traffic coordinators to do so in accordance with article 9.5 of the collective agreement, with the prior concurrence of the proper officer of the Company and the appropriate general chairperson.

January 19, 2009

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**