

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

CASE NO. 3895

Heard in Montreal Tuesday, 11 May 2010

Concerning

CANADIAN NATIONAL TRANSPORTATION LIMITED

and

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

EX PARTE

DISPUTE:

The termination of the standard contract of Harwinder Sidhu, Owner-Operator with CN Transportation Ltd. (CNTL) at Calgary, Alberta.

UNION'S STATEMENT OF ISSUE:

The termination of the standard contract of Harwinder Sidhu, Owner-Operator with CN Transportation Ltd. (CNTL) at Calgary, Alberta. This action followed an incident that occurred at Champion Hay Processors in Didsbury, Alberta on December 19, 2008 and for Mr. Sidhu subsequently failing a driver evaluation that was arranged by CNTL with CCA Truck Driver Training Ltd. in Calgary on December 30, 2008.

It is the position of the Union that terminating the grievor for this incident is extremely harsh. There were mitigating factors to consider which the Company failed to take into account.

The Union requests that the Company reinstate the grievor with full seniority and compensation for the period that he was terminated.

FOR THE UNION:

(SGD.) B. KENNEDY
PRESIDENT, COUNCIL 4000

There appeared on behalf of the Company:

- F. O'Neill – Manager, Labour Relations, Toronto
- M. Peterson – Operations Manager, Toronto

And on behalf of the Union:

- R. Fitzgerald – National Staff Representative, Toronto
- B. Kennedy – President, Edmonton
- D. Andru – Regional Representative, Toronto

AWARD OF THE ARBITRATOR

The Company objects to the arbitrability of the instant grievance by reason of the expiry of time limits. It is not disputed that a period of some fourteen months did elapse between the time of the Company's declination of the grievance and the Union's filing for arbitration.

The basic chronology is not in dispute. On January 5, 2009 the Company advised the grievor that it was terminating his standard Owner-Operator contract, following the investigation of an accident, observation of what was viewed as erratic driving and his subsequent failure of a road test. On January 12, 2009 the Union grieved the termination and on February 10, 2009 the Company gave its Step 1 response denying the grievance.

Following that event, it was incumbent upon the Union to proceed with a Step 2 grievance. The Company maintains that no Step 2 grievance was ever filed. However, the material before the Arbitrator confirms that a Step 2 grievance, dated February 27, 2009 was faxed to the Company, addressed to Supervisor James Cairns, with an attention flag to National Manager, Field Operations Martyn Peterson. That document was, in accordance with the understood practice, faxed to a Company fax number. As emerged at the hearing, it appears that the fax number utilized was not one that has had currency for the purposes of dealing with grievances for some considerable time, although it does not appear disputed that the number used is a valid Company fax number. In addition to the Step 2 grievance which was faxed, the Union filed in

evidence the confirmation report which indicates that the message was received at the number to which it was addressed.

In the Arbitrator's view the facts disclosed reveal a circumstance which justifies the exercise of the Arbitrator's discretion under section 60(1.1) of the **Canada Labour Code** to extend the time limits. While it is clear that the sixty day time limit provided for advancing the grievance following a Step 2 decision, in accordance with article 5.11 of the collective agreement, was not followed, that would appear to be because the Union never received any response from the Company to its Step 2 grievance, an outcome that is explained above.

The termination of an individual's employment is a serious matter. As stressed by the courts in **Re Blouin Drywall Contractors Ltd. and United Brotherhood of Carpenters and Joiners of America, Local 2486** (1975), 8 O.R. (2d) 103 (Ont. C.A.), technicalities should not prevail in the handling of grievances. In the instant case I am stratified that the Union has demonstrated that it took all reasonable steps to pursue the grievance in a timely manner, and that it "fell between the cracks" by reason of the use of an outdated fax number. The material before me does not disclose a pattern of negligence or indifference of the part of the trade union.

For the foregoing reasons the preliminary objection as to timeliness and arbitrability is rejected. The Arbitrator exercises his discretion under the **Canada Labour Code** to extend the time limits and to allow the matter to be heard on its merits.

May 17, 2010

(SIGNED) MICHEL G. PICHER
ARBITRATOR

The matter was ultimately resolved between the parties and no further award issued.