

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

CASE NO. 3915

Heard in Edmonton, Thursday 10 June 2010

Concerning

VIA RAIL CANADA INC.

And

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

DISPUTE:

Whether the Corporation had the right to terminate the employment of an employee while of Workers' Compensation for non-disciplinary reasons and frustration of employment.

JOINT STATEMENT OF ISSUE:

On November 10, 2009 a registered letter was sent to the grievor informing her that her name will be removed from the VIA Rail seniority list and her employment terminated effective November 20, 2009.

The Union's position is that the Corporation has some responsibility to their employees who are injured in their employ. The Union contends that there are no provisions of the collective agreement no. 1 that would justify the grievor's termination. Nor are there any disciplinary reasons. The Union also contends that the grievor cannot be discharged without a fair and impartial investigation as per article 24.1.

The Union seeks immediate reinstatement without loss of seniority and reimbursement for any lost wages and benefits and made whole.

The Corporation contends that since the grievor suffers a permanent disability and that there is little reason to believe that her ability to return to active status will not change, the frustration of the employment contract is clear. Therefore the Corporation's obligation has been met and the grievor is no longer in the employ of VIA Rail. For these reasons the Corporation has respectfully declined the grievance.

FOR THE UNION:
(SGD.) R. FITZGERALD
NATIONAL REPRESENTATIVE

FOR THE CORPORATION:
(SGD.) B. A. BLAIR
SR. ADVISOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

D. Stroka

– Sr. Advisor, Labour Relations, Montreal

C. Larivière	– Manager, Customer Experience, Winnipeg
B. A. Blair	– Sr. Advisor, Labour Relations, Montreal
L. Selesnic	– Manager, Customer Experience

There appeared on behalf of the Union:

D. Andru	– Regional Representative, Toronto
B. Kennedy	– President, Edmonton
D. Kissak	– Regional Representative, Winnipeg

The hearing was adjourned *sine die* by the agreement of the parties.