

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

**CASE NO. 3926**

Heard in Montreal, Tuesday, 14 September 2010

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

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

**EX PARTE**

**DISPUTE:**

The Company's failure to provide Mr. Mike Zacchigna with a safe work environment free from discrimination, harassment and bullying.

**UNION'S STATEMENT OF ISSUE:**

During the 2004 national rail strike which commenced February 20, 2004, the Company employed the grievor as a replacement worker to work at the Brampton Intermodal Terminal for the duration of the strike, which ended on or about March 16, 2004 at which time the grievor left the employ of CN Rail. In December 2004, the grievor was subsequently re-employed at CN Rail Brampton Intermodal Terminal.

It is the Union's position that after working for several months, the grievor's history became known in the workplace and he was subjected to aggressive harassment in the workplace, including physical threats and intimidation. The grievor made ongoing complaints to the Company but the Company took no effective action and conditions persisted. In July 2009 the grievor approached the Company one more time and advised that he could no longer work under these conditions and could not return to the workplace until the matter was rectified. To date the Company has neither investigated the matter nor taken any action to resolve the situation.

The Union submits that the Company has violated its obligations under article 32.9(a) of the collective agreement as well as section 124 of the *Canada Labour Code* and its regulations.

The Union requests that the grievor be provided a safe and harassment free workplace to be returned to and compensation for all losses and appropriate damages.

The Company denies the grievance.

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

There appeared on behalf of the Company:

- S. Prudames – Labour Relations Officer, Toronto
- D. Cater – Team Manager, BIT
- C. Trolley – Sr. Program Manager, Transportation Renewal, Montreal
- J. Chamberland – Workers Compensation Coordinator
- D. S. Fisher – Sr. Director, Labour Relations, Montreal

And on behalf of the Union:

- R. Fitzgerald – National Staff Representative, Toronto
- J. Almdal – Regional Representative, Toronto
- M. Zacchigna – Grievor

### **AWARD OF THE ARBITRATOR**

The record discloses that the grievor, who was initially hired as a strike replacement, has suffered extensive harassment in the workplace, generally in the form of written graffiti in a bathroom aimed at him, but also, on occasion, as a result of jostling and verbal comments.

The Arbitrator is satisfied that the Company has in fact done all that it can in relation to the grievor's complaints. Significantly, Mr. Zacchigna has declined to name individuals whom he alleges have harassed him. On one occasion, when an individual was in fact identified, the Company took the necessary steps to deal with that person, and it appears that the grievor is no longer harassed by him.

The Arbitrator can appreciate the difficulty of the grievor's situation. As an employee who was hired essentially as a strike replacement, he must appreciate that his past actions would not be such as to endear him to fellow employees who were

striking at the time he was hired. While as a matter of law he is plainly entitled to be free of harassment, the issue in the instant case is whether the Company has violated the collective agreement or any related employment legislation by failing to provide him adequate protection. I cannot find that it has. As noted above, it would appear that the Company has acted on every piece of information available to it to assist the grievor. I do not see how it can be asked to do more.

The grievance must therefore be dismissed.

September 20, 2010

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