

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

CASE NO. 3986

Heard in Calgary, Wednesday, 9 March 2011

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Policy grievance on behalf of Conductor L.S. Adams of Sioux Lookout regarding violation of article 152 of agreement 4.3 an appropriate remedy be applied under the provisions of article 121.10 of agreement 4.3.

UNION'S STATEMENT OF ISSUE:

On February 12, 2008, Conductor Adams was required to travel by air to Armstrong, Ontario where he was ordered to take a work train to a mainline worksite. Conductor Adams was advised that a member of the crew would be required to ride the lead car in extreme winter conditions for a distance of some 18 miles. Conductor Adams invoked his right to refuse unsafe working conditions under Part 2 of the *Canada Labour Code*, section 128.

It is the Union's position that the Company, in an unreasonable manner and in violation of Mr. Adams' substantive rights: **(1)** did not comply with Part 2 of the *Canada Labour Code*, **(2)** violated the *Human Rights Act*, **(3)** violated their own internal harassment policy, **(4)** disciplined Mr. Adams, **(5)** harassed, intimidated and threatened Mr. Adams, **(6)** commenced a subsequent campaign to harass, intimidate and punish Mr. Adams, **(7)** refused to allow Mr. Adams his choice of accredited representative.

Accordingly, the Union requests that: **(1)** The Company be found in violation of article 152 of agreement 4.3. **(2)** The Company be found in violation of the Workplace Environment provision, article 152 of agreement 4.3, **(3)** The Company be directed to cease and desist from violating article 152 of agreement 4.3, **(4)** An appropriate remedy be ordered under the provisions of article 121.10 of agreement 4.3, **(5)** The grievor be exonerated of any wrongdoing and all related discipline assessed be removed from his record, **(6)** The Company be found in violation of the *Canada Labour Code*, **(7)** The Company be found in violation of the *Human Rights Act*, **(8)** Damages be awarded to the grievor as may be determined appropriate by the arbitrator, **(9)** Legal costs be awarded to the Union.

The Company disagrees with the Union.

**FOR THE UNION:
(SGD.) B. R. BOECHLER
GENERAL CHAIRMAN**

There appeared on behalf of the Company:

- D. Gagné – Sr. Manager, Labour Relations, Montreal
- D. VanCauwenbergh – Director, Labour Relations, Toronto
- R. Baker – Superintendent, Capreol
- K. Morris – Sr. Manager, Labour Relations, Edmonton

There appeared on behalf of the Union:

- M. A. Church – Counsel, Toronto
- B. R. Boechler – General Chairman, Edmonton
- R. A. Hackl – Vice-General Chairman, Edmonton
- A. W. Franko – Vice-General Chairman, Edmonton
- L. Adams – Grievor

AWARD OF THE ARBITRATOR

For the reasons expressed in **CROA&DR 3985**, the grievance is dismissed.

March 14, 2011

(signed) MICHEL G. PICHER
ARBITRATOR