

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION

CASE NO. 3997

Heard in Montreal, Wednesday, 14 April 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The allegation of the Union with respect to the Company's failure to return Employee X to active service.

COMPANY'S STATEMENT OF ISSUE:

On September 29, 2010, The Canadian Human Rights Tribunal upheld the complaint of Employee X dealing with the matter of family status discrimination under the *Canadian Human Rights Act* and ordered the reinstatement of the grievor.

The Company's Chief Medical Officer reviewed the grievor's medical file and all information and medical reports submitted by the grievor and her physician with regards to her return to active service performing safety critical work. After this review Dr. Leger requested that additional medical information be provided before the grievor could be deemed medically fit to work. To date the grievor has not provided the requested information to the Chief Medical Officer and therefore the grievor has not been cleared for return to work in a safety critical position. The grievor denied access to her medical file in this matter to CN Labour Relations.

The Union contends that the Company has misinterpreted prior physician reports concerning the grievor's fitness for duty and that the Company has improperly held the grievor out of service. The Union requests that the grievor be made whole for all losses while being held out of service.

The Company disagrees with the Union's contentions.

FOR THE COMPANY:

(SGD.) P. PAYNE

FOR: DIRECTOR, LABOUR RELATIONS

On a conference call held on Wednesday, April 13, 2011:

There appeared on behalf of the Company:

S-P Paquette	– Counsel, Montreal
D. S. Fisher	– Director, Labour Relations, Montreal
P. Payne	– Manager, Labour Relations, Edmonton

And on behalf of the Union:

M. A. Church
R. A. Hackl

– Counsel, Toronto
– Vice-General Chairman, Edmonton

INTERIM AWARD OF THE ARBITRATOR

Having heard the submissions of the parties, the Arbitrator directs that the Company be given access to all medical reports or documentation in the possession of its Occupational Health & Safety staff, insofar as such reports or documentation pertain to the grievor's history of seizures or any aspect of her past or current neurological condition. The Company's counsel may also disclose and make reference to any documentation or correspondence in his possession to the extent that such documents or correspondence relate to the grievor's history of seizures or her past and current neurological condition.

April 15, 2011

(signed) MICHEL G. PICHER
CHIEF ARBITRATOR