

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION  
CASE NO. 4134**

Heard in Montreal, Tuesday, 11 September 2012

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**UNITED STEELWORKERS UNION – LOCAL 2004**

**DISPUTE:**

The Company failed to provide the estate of E. Boychuk with life insurance proceeds in accordance with the requirements of the collective agreement and or the plan.

**UNION'S STATEMENT OF ISSUE:**

The estate of E. Boychuk initiated a complaint under s.37 of the *Canada Labour Code* against the Union. The estate and the Union entered into a settlement in which a grievance was to be filed against CN Rail. The Union submitted the grievance at Step 3 of the grievance procedure with the approval of CN Rail.

The Company submits that the grievance is untimely and therefore not arbitrable.

**FOR THE UNION:**

**(SGD.) M. PICHÉ**

**STAFF REPRESENTATIVE**

There appeared on behalf of the Company:

B. Laidlaw	– Manager, Labour Relations, Winnipeg
S. Grou	– Sr. Manager, Labour Relations, Montreal
S-P Paquette	– Counsel, Montreal
J. Wilner	– Benefits Advisor
D. Fisher	– Sr. Director, Labour Relations, Montreal

There appeared on behalf of the Union:

M. G. Piché	– Staff Representative, Toronto
T. Driol	– Executor, Boychuk Estate

### **AWARD OF THE ARBITRATOR**

This grievance is brought on behalf of estate of deceased employee Edward Boychuk. The estate's executor, Ms. Tena Driol, maintains that the estate was improperly paid the life insurance benefit of her deceased brother. The payment which was offered to the estate was \$22,542.01, said by the Company to represent the amount payable under the Employee Benefit Plan Supplemental Agreement dated July 25, 1986, as revised by a 1989 Memorandum of Agreement. The latter memorandum of agreement increased the group life insurance coverage benefit to \$22,000. Ms. Driol refused to accept that amount in satisfaction of the estate's claim and commenced civil actions against both the Company and the Insurer, Great West Life.

The record before me confirms that the initial action commenced by the estate was against Great West Life and that on or about July 30, 2009 CN was added as a defendant. The Company then brought a motion before the Supreme Court of British Columbia to have the law suit against itself dismissed. It was successful in that regard, and a ruling of Justice Rice of the Supreme Court of British Columbia made on April 30, 2010 concluded that the court lacked jurisdiction to adjudicate the claim and that the matter must be dealt with by virtue of the arbitration process established under the collective agreement.

The action as against Great West Life continued and resulted in a settlement of the claim. As part of that settlement, a copy of which is filed in evidence, the estate of

Mr. Boychuk received \$110,000. A condition of that settlement, framed as an undertaking of the executor, reads as follows:

I, TENA DRIOL, agree that I will not make any claim or take any proceeding against any other person or entity who or which might claim contribution or indemnity against Great-West Life, under the provisions of any statute or otherwise, in respect of any of the matters referred to in this release.

The Union did not file any grievance initially with respect to what is now the estate's claim. The unchallenged representation of the Company is that the Union's initial position was that any grievance would be untimely. Mr. Boychuk, who was hired in 1965 and left active service in 1991 passed away on September 24, 2006. In November of 2006 Ms. Driol wrote to Company Benefits Advisor Johanne Wilner claiming, in part, that she believed that the benefits payable to the estate totalled some \$265,000. On January 22, 2007 Ms. Driol sent an email to Ms. Wilner claiming that the estate should be paid \$50,000 by the Company as life insurance benefits. A request for a similar amount was put forward in a letter from a lawyer for Mr. Boychuk's estate, Mr. Gerhard Pyper, on April 6, 2007.

In November of 2007 Great West Life tendered to the estate a cheque in the amount of \$22,542. As noted above, the estate refused to accept that cheque and apparently it was never cashed. The civil suit against Great West Life was then commenced before the British Columbia Supreme Court on February 20, 2008. Following the dismissal of the action as against CN, on July 5, 2010 Mr. Pyper wrote to the Company, purporting to grieve under the collective agreement, claiming a life

insurance benefit in the amount of \$300,000. The Company declined to deal with Mr. Pyper and referred him to the Union.

The first reaction of the Union, which does not appear disputed, was that any claim to be filed on behalf of Mr. Boychuk's estate was untimely and would therefore not be arbitrable. However, following a complaint before the Canada Industrial Relations Board the Union relented and agreed to file the grievance which is here under consideration. It is notable that the settlement reached between the estate and the Union contains an express condition that the estate agrees not to take any further action against the Union if the grievance is ultimately dismissed as being untimely.

The Company brings a preliminary objection to the arbitrability of the grievance. It's objection is twofold: firstly, it submits that the estate can have no claim against the Company to the extent that the claim before the insurer, which is the same claim as is made in this arbitration, was in fact settled by Great West Life by the payment of \$110,000, a condition of which was that there would be no further action by the estate in respect of the claim as against other parties who might claim contribution or indemnity against Great West Life. Secondly, the Company submits that given that the cause of the grievance was known by the estate in 2006, and certainly by November of 2007 when the insurer issued the cheque which was never cashed, the grievance herein, filed on March 23, 2012 is clearly beyond the time limits contemplated in the collective agreement. In that regard the Company's representative draws to the Arbitrator's

attention the provisions of articles 18 and 19 of the collective agreement which read, in part, as follows:

**18.6** A grievance concerning the interpretation, or alleged violation of this Agreement, or an appeal by an employee who believes he has been unjustly dealt with shall be handled in the following manner.

**Step 1**

The aggrieved employee/employees or their duly authorized representative, shall present the grievance in writing to the Officer designated by the Company within twenty-eight days from the date of the cause of the grievance and a decision shall be rendered in writing within twenty-eight days of receipt of the grievance.

...

**18.8** A grievance not progressed within the time limits specified shall be considered settled on the basis of the last decision and shall not be subject to further appeal. Where a decision is not rendered by the appropriate officer of the Company within the time limits specified, the grievance may be progressed to the next step in the grievance procedure, except as otherwise provided in Article 18.9.

...

**19.1** A grievance which is not settled at the last step of the grievance procedure may be referred by either party to the Canadian Railway Office of Arbitration for final and binding settlement without stoppage of work.

During the course of the arbitration hearing the perspective of the estate was made more clear. It appears that the claim which the estate would make before this Office is for a life insurance benefit payment of \$300,000, \$80,000 for legal fees and punitive damages of \$1,000,000. As indicated during the hearing, the claim rests on the premise that the Company did not sufficiently give notice to the late Mr. Boychuk of his right to purchase additional life insurance benefits, beyond his initial \$22,000 benefit, to a possible total of \$300,000. The Company takes the position that it was under no obligation to provide him with any such information.

I turn to consider the merits of this dispute. In my view the timeliness objection raised by the Company must be sustained. On its face, the collective agreement contemplates that a grievance should be filed within twenty-eight days from the cause of the grievance. On a conservative estimate, that time period would have commenced running when the estate received the cheque of slightly more than \$22,000 which was paid out by Great West Life in November of 2007. It took fully more than four years beyond that point for the grievance to be filed. I appreciate that there should be some allowance for an estate based claim to be progressed. I also accept that the time involved in the section 37 complaint before the CIRB could also have been a contributing factor. But the fact remains that a substantial period of time has elapsed. Indeed, that appears to have been the initial impression of the Union itself. The Union's consciousness of the timeliness issue was such as to prompt it to protect itself against a timeliness ruling in the terms of the settlement which it made with the estate to bring the section 37 complaint to an end.

While this Office does have a discretion to extend time limits under the terms of the **Canada Labour Code**, where it would appear reasonable to do so, I can see nothing before me that would constitute reasonable grounds to extend the time limits in the case at hand to what would effectively be a five year extension. In coming to that conclusion I am also mindful of the settlement of the claim which was made with Great West Life.

In my view the settlement with Great West Life is itself a sufficient and entire bar to the arbitrability of this claim. Under the terms of the collective agreement it is the insurer, Great West Life, and not the Company which has the obligation to provide the benefits in the insurance plan purchased by the Company. It is for that reason that the initial claim of the estate as against the Company was by way of joinder in the action already commenced against Great West Life. As noted above, the claim against Great West Life was fully and finally resolved by a settlement which saw the payment of \$110,000 to the estate of Mr. Boychuk in return for a number of conditions. One of those conditions, signed by Executor Tena Driol bears repetition here:

I, TENA DRIOL, agree that I will not make any claim or take any proceeding against any other person or entity who or which might claim contribution or indemnity against Great-West Life, under the provisions of any statute or otherwise, in respect of any of the matters referred to in this release.

In my view the above undertaking, which is a condition of receiving the monies paid out by Great West Life, must be construed as preventing any claim as against the Company, considering that the Company would be in a position to claim contribution or indemnity against Great West Life. Moreover, even if that undertaking was not contained in the settlement document made between the estate and Great West Life, I would still be inclined to accept the separate argument of the Company, that it would be an improper form of double compensation for the estate, having accepted a settlement from the insurer, to now pursue its claim as against the Company for the balance of the \$300,000 which it feels should have been paid to the estate.

To put the matter in its simplest terms, under the collective agreement the Company undertook to pay the premiums for a life insurance plan. The insurer is Great West Life. The insurer was sued by the estate for the claim payable and reached a settlement whereby \$110,000 was paid to Ms. Driol as executor of the estate of Edward Boychuk. On what reasonable basis can the estate now be seen to pursue the Company, or any other entity, having effectively accepted a settlement with the insurer, presumably in satisfaction of the estate's insurance claim. The claim which the estate originally made against Great West Life is the identical claim which it had against the Company when it attempted to join the Company as a party to its action in the British Columbia Supreme Court. In my view, quite apart from issues of timeliness, the settlement of that claim as against the insurer must be viewed as being in satisfaction of the entire claim without any right of further recourse against the Company. That, moreover, is the express purpose of the "non-proceeding" condition agreed to by Ms. Driol within the text of her settlement with Great West Life.

For the foregoing reasons the Arbitrator finds that the grievance is not arbitrable. It is untimely, and it is barred by the settlement of the estate's insurance claim with Great West Life. The grievance is therefore dismissed.

September 18, 2012

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