

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 630

Heard at Montreal, Wednesday, September 14, 1977

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Dismissal of Mr. Clifford Huston.

EMPLOYEE'S STATEMENT OF ISSUE:

Mr. C. Huston has been unjustly dismissed from the Company, Quebec North Shore & Labrador Railway, and this is in violation of our Collective Agreement.

Reason for dismissal "absence without leave", and without a proper investigation and notification of charge.

The Company refused to reinstate Mr. Huston as trainman with full benefits due him.

FOR THE EMPLOYEE:

(SGD.) J. ROY
GENERAL CHAIRMAN

There appeared on behalf of the Company:

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| J. | Bazin | Counsel - Montreal |
| F. | LeBlanc | Superintendent Labour Relations, QNS&L Rly., Sept-Iles |
| A. | Dolliver | Superintendent - Train Movements, QNS&L Rly., Sept-Iles |

And on behalf of the Brotherhood:

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| R. | Cleary | Counsel - Montreal |
| J. | Roy | General Chairman, U.T.U.(T) - Sept-Iles, Que. |
| C. | Huston | (Grievor) |

AWARD OF THE ARBITRATOR

The Union, the United Transportation Union, seeks to present, on behalf of the grievor, a grievance relating to the grievor's discharge, which was effected on April 26, 1976. The grievor is a member of the United Transportation Union, and (subject to the continuation of his status as an employee of the Company) would be entitled to exercise certain seniority rights pursuant to the

collective agreement between the United Transportation Union and the Company. The grievor worked as a trainman, and thus as a member of the bargaining unit of employees represented by the United Transportation Union from 1960 to 1970, and it is by virtue of that that he retained certain seniority rights pursuant to the United Transportation Union's collective agreement.

While the grievor's discharge was effected on April 26, 1976, this grievance was not filed until April 18, 1977. The grievor's name had been removed from the seniority list of employees having rights in the United Transportation Workers' bargaining unit in September 1976, and the Union had not availed itself of the procedure available under the collective agreement for challenging such list.

At the time of his discharge, and since 1970, the grievor was employed as an engineman, and was a member of the bargaining unit of employees represented by the Brotherhood of Locomotive Engineers.

The Company has raised a number of preliminary objections to this grievance, based on the circumstances above set out. These are, essentially that the United Transportation Union is not entitled to represent the grievor in a matter of this nature, and that the grievance has been filed out of time.

As to the timeliness of the matter, there is a question whether or not the grievor's discharge was a disciplinary matter or not. The grievor was discharged when he did not return to work following an extended vacation which he had been granted. He had been refused leave of absence for a period following that of the vacation. The grievor did not return to work because he was in jail.

If the Company's action in discharging the grievor was not a disciplinary matter then, under Article 18.01 of the collective agreement between the United Transportation Union and the Company (and the same appears in the collective agreement between the Brotherhood of Locomotive Engineers and the Company), any grievance would have to be presented within thirty days. The grievance was not presented within that period, and would not be properly before me.

If on the other hand, the discharge of the grievor was a disciplinary matter (and that seems to me the better view), then by Article 17.01 (of either collective agreement) the Company was required to hold a hearing into the matter. Any grievance would have to be filed within thirty days of the investigation decision. No investigation was held in this case (the grievor being in jail) and the imposition of discipline would then appear to have been contrary to the provisions of the collective agreement. Any grievance relating thereto would not be subject to a thirty-day time limit, but it would be my view that such a grievance must nevertheless be filed within a reasonable time. A delay of almost one year does not appear to me to be reasonable, particularly where, as here, the grievor's name was struck from the seniority list published to the Union in the usual way, and to which no objection was taken in accordance with the procedure set out.

While it would be my view that the grievance has not been filed within a reasonable time and that the grievance must be dismissed for

that reason, I also decide this case on the ground that the grievance need not be received at all, the United Transportation Union not being the bargaining agent entitled to represent enginemen in the employ of the Company. At all times material to this grievance the grievor was a member of the enginemen's bargaining unit. By reason of his past service, he retained certain rights under the United Transportation Union's collective agreement with the Company, but those are not the rights which are in dispute in this case. This grievance relates to the grievor's discharge on April 26, 1976. At that time the only trade union entitled to represent the grievor in a matter of this sort was the Brotherhood of Locomotive Engineers. The United Transportation Union cannot represent the grievor as his bargaining agent for this purpose.

For the foregoing reasons, the preliminary objection must be sustained and these proceedings terminated.

J.F.W. WEATHERILL
ARBITRATOR