

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1355

Heard at Montreal, Wednesday, May 15, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim by Mr. Marcellin Morin for not being permitted to return to his position of Carpenter on 5 December 1983.

JOINT STATEMENT OF ISSUE:

On 19 August 1968 Mr. Morin was involved in a car accident in which he sustained a skull fracture which left him with paralysis of the left side of his body.

On 7 August 1969 Mr. Morin reported to the Company's Montreal Clinic for a medical examination. The Company Medical Department found that Mr. Morin's condition would not permit him to meet the physical demands required of a Plumber and he was medically restricted to; "ground level work only, no climbing ladders, no lifting heavy objects and no walking long distances".

As a result of Mr. Morin's medical restrictions, he was unable to return to work except for two brief periods during 1971 and 1972 when clerical work became available to him.

Mr. Morin's medical restrictions were still in place on 23 May 1973 when he was offered Carpenter work which, at the time, was compatible with his physical conditions.

On 19 November 1983 Mr. Morin went on sick leave and, prior to being permitted to return to work, he was required to undergo a medical examination at the Company's Montreal Clinic on 12 December 1983. The Company Medical Department found that Mr. Morin's condition would not permit him to meet the physical demands required of a Carpenter.

The Union claims that Mr. Morin was fit to perform the work of a Carpenter despite his medical restrictions.

The Company declined the claim.

FOR THE BROTHERHOOD:

(SGD.) PAUL A. LEGROS
System Federation General Chairman

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
Assistant Vice President

Labour Relations

There appeared on behalf of the Company:

T. D. Ferens	- Manager Labour Relations, CNR, Montreal
P. J. Thivierge	- Manager Labour Relations, CNR, Montreal
D. Lord	- Labour Relations Officer, CNR, Montreal
J. Russell	- Labour Relations Officer, CNR, Montreal
M. Menard	- Employee Relations Officer, CNR, Montreal
D. L. Cormier	- B & B Master, CNR, Quebec
G. A. Anctil	- Instructor Training Centre, CNR, Charny
D. L'Ecuyer	- B & B Foreman, CNR, Senneterre

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And on behalf of the Brotherhood:

P. A. Legros	- System Federation General Chairman, BMWE, Ottawa
Roland Roy	- General Chairman, BMWE, Riviere-du-Loup
R. Y. Gaudreau	- Vice-President, BMWE, Ottawa
L. M. DiMassimo	- Federation General Chairman, BMWE, Montreal
M. Morin	- Grievor
G. Schneider	System Federation General Chairman, Observer BMWE, Winnipeg
T. J. Jasson	- Federation General Chairman, BMWE, Observer BMWE, Winnipeg

AWARD OF THE ARBITRATOR

For approximately ten years the grievor, because of his disability, performed the duties of a carpenter on a restricted basis. He is precluded from climbing ladders, from lifting heavy objects and from walking long distances. The work he performed was confined "to ground level work only". There is no dispute that these restrictions were warranted because of the grievor's handicap.

What precipitated this dispute was the grievor's own complaint that he could not carry out the work assignment that were given him. This prompted his Supervisor to direct that the grievor undergo a medical examination. The medical evidence confirmed the continued prudence of restricting the types of carpentry duties the grievor should discharge. Indeed, the sense I drew from the materials presented in the parties' briefs was that the grievor had not confined himself to the restricted assignments prescribed by the company's doctor but had undertaken regular carpentry duties. And, indeed, the grievor had good reason for complaining of difficulty in his discharging these carpentry duties.

The company was prepared to maintain the grievor's services as a carpenter on a restricted basis so long as there were "light" duties available for him to perform. But for the various reasons outlined in the company's brief insufficient work was available to warrant retaining the grievor's employ as a carpenter in a restricted capacity and on a regular basis. Nor could the company risk injury

to the grievor or his colleagues in his performing the regular duties of a carpenter. Accordingly, I am satisfied that the grievor presently holds the status of a redundant employee. In short, he has not established a case that the company has improperly denied him his position as a carpenter. As a result his grievance is rejected.

DAVID H. KATES,
ARBITRATOR.