

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1871

Heard at Montreal, Wednesday, 11 January 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE

Ms. Brenda Thompson was not of sound mind on June 2nd, 1988 when she resigned from Canadian National. She was "unjustly dealt with" under Article 24.5 when she was denied withdrawal of her resignation.

BROTHERHOOD'S STATEMENT OF ISSUE:

While under doctor's care at the time, Brenda Thompson resigned from Canadian National on June 2nd, 1988.

On June 13th, 1988, Ms. Thompson returned to the Company with a letter from her doctor that during the time she resigned, she was considered unfit and under considerable stress. Mr. R.J. Fitzgerald asked the Company to reconsider. The Company advised they would advise him of their final decision. Failing having heard from the Company, Mr. Fitzgerald grieved the matter on behalf of Ms. Thompson in a letter dated June 25th, 1988.

It is the Union's contention that, at the time she resigned, she was not of sound mind and was under doctor's care. This was verified by her doctor claiming that she was under considerable stress.

The Company claims the matter was submitted at Step One of the grievance procedure on an untimely basis. The Union claims it was timely, whereby the Company never returned to the Union on its promise to reconsider.

It is the Union's contention that Ms. Thompson's resignation should have been withdrawn and she should be returned to the service of the Company with full seniority and paid for any loss of wages and benefits lost.

FOR THE BROTHERHOOD:

(SGD) TOM McGRATH
National Vice-President

There appeared on behalf of the Company:

S. F. McConville - Labour Relations Officer, Montreal
G. Wheatley - Manager, Labour Relations, Montreal
B. Hogan - Manager, Crew Management Centre, Toronto

And on behalf of the Brotherhood:

R. E. Gee - Representative, Toronto
T. N. Stol - Regional Vice-President, Toronto
R. J. Fitzgerald - Witness

PRELIMINARY AWARD OF THE ARBITRATOR

The sole issue to be determined is the timeliness of the grievance. On the material before the Arbitrator there is some substantial doubt as to when the Union was made aware that the Company was categorically refusing to rescind the resignation of Ms. Thompson. Her resignation was tendered on June 1st, processed on June 3rd and she sought rescission of it on June 6th. The evidence of Union representative Bob Fitzgerald establishes to the satisfaction of the Arbitrator that during the week of June 6th he spoke with the manager of the Crew Management Centre, Mr. Barry Hogan, expressing his concerns about the grievor's circumstances, including the voluntariness and advisability of her resignation. Mr. Fitzgerald relates that during that meeting Mr. Hogan, who had the initial power of decision with respect to the processing of the grievor's resignation, gave him the clear impression that he was going to do whatever was necessary to work out with the Employee Relations Department the mechanics of getting her back to work. It was not until some time later in the month that Mr. Fitzgerald, through another source, learned that nothing was being done with respect to reconsideration or rectification of the grievor's case. At that point the grievance was filed.

The threshold issue is the determination of the point in time at which the Union knew, or reasonably should have known, that it was at odds with the Company and must proceed by way of a grievance on behalf of Ms. Thompson. It is clear to the Arbitrator that at the conclusion of the discussion between Mr. Fitzgerald and Mr. Hogan, the Union's representative was left with the impression that the manager of the crewing dispatch centre was sympathetic to his concerns and was going to use his authority to endeavour to correct the situation. While Mr. Hogan expressed the belief during his own testimony that he got back to Mr. Fitzgerald during that same work with a negative reply, he was, by his own admission, less than certain as to whether he did so at that time.

Although the merits have not been dealt with in any detail, the issue in this matter appears to be whether the Company constructively discharged the grievor on June 6 and thereafter by refusing her request to be returned to work. For the reasons noted above, I am satisfied, on the balance of probabilities, that the Union did not become aware that the Company had made a clear and final decision in that regard until substantially later in the month. In these

circumstances I must conclude that the grievance, filed on June 25, 1988 immediately after Mr. Fitzgerald learned that the Company was refusing to reconsider the grievor's resignation, is timely within the terms of Article 24 of the Collective Agreement, which allows a grievance to be filed within fourteen calendar days from the cause of the grievance.

For the foregoing reasons the grievance is found to be timely and shall be remitted to be heard on its merits.

January 13, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR