TRANSLATION

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2239
Heard at Montreal, Wednesday, 11 March 1992
concerning
CANPAR
and
TRANSPORTATION COMMUNICATIONS UNION
EX PARTE
DISPUTE:
Discharge of Mr. Mourad Ghanouchi on July 13, 1991, for allegation of refusing to report to work.
UNION'S STATEMENT OF ISSUE:
On August 7, 1991, and while he was on a leave of absence, Mr. Ghanouchi received from the Company his record of employment stating he was no longer working for the Company.
The same day and after he received his record employment, he went to the Company in order to know the reasons why he's been dismissed and initiated a grievance.
On August 21, 1991, Mr. Ghanouchi received a letter dated July 30 stating he was discharged, effective July 31, 1991, and because he didn't report to work or communicate with the Company in accordance with a letter dated July 24, 1991.
Mr. Ghanouchi never received the letter dated July 24, 1991.
No interview has been held in accordance with Article 6 of the Collective Agreement.
The Union contends that Mr. Ghanouchi has been illegally and unjustly discharged from his job. The Union also contends that no interview has been held in accordance with Article 6 of the Collective Agreement and there is also a contravention by the Company of Articles 6.1, 6.2, 6.3, 6.4 and 6.5 of the Collective Agreement. For the above-mentioned reasons, the Union requests that Mr. Ghanouchi be reinstated in his employment and be reimbursed for all loss of salary and benefits and without loss of seniority.
The Company has denied the Union's contention.
FOR THE UNION:
(SGD.) J. CRABB
EXECUTIVE VICE-PRESIDENT
There appeared on behalf of the Company:
G. Gagnon
Counsel, Montreal
P. D. MacLeod
Director, Linehaul & Safety, Toronto
R. St. James
Supervisor, Montreal
A. Plouffe
Supervisor, Montreal
J. Crosby
Manager, Montreal
And on behalf of the Union:
K. Cahil
Counsel, Montreal
M. Gauthier
Vice-President, Montreal
R. Pichette
Local Chairman, Montreal

M. Ghanouchi
Grievor

AWARD OF THE ARBITRATOR

It appears from the documents filed, as well as from the evidence, that on August 5, 1991, the Company sent to Mr. Ghanouchi an employment record advising him that his employment was terminated because of absenteeism. It is agreed that, for diverse reasons, the grievor had been absent from work for 63 days in 1988, 124 days in 1989, 184 days in 1990 and 146 days in the first seven months of 1991. During that final year he was at work for only 5 days. Furthermore, it is evident that in the past the grievor had been clearly warned that his problems with absenteeism were unacceptable. His employment had previously been terminated in 1987 for the same reason. At that time, during the grievance procedure, he was reinstated into his employment, but without compensation. As well, the evidence of Supervisor Alain Plouffe, whom the Arbitrator judges to be credible, reveals that Mr. Ghanouchi had been warned several times in 1991 that his attendance must improve. A written warning to that effect was communicated to him on June 6, 1991.

The Arbitrator cannot accept the claim of Counsel for the Union to the effect that the Employer's real motive in firing the grievor was because he had not responded to a letter sent by registered mail on July 24, 1991. That position is based on the contents of a letter dated August 23, 1991 sent to Union Representative Ren Pichette by Supervisor John Crosby, following the termination of the grievor's employment. That letter must be interpreted in the context of events. It is clear that after August 5, 1991, the Company considered that the grievor's employment had been terminated. The discussions which followed that date, including the possibility of an interview to discuss the chances of returning Mr. Ghanouchi to work, were negotiations relative to the merits of his grievance of August 9, 1991. It was not a matter therefore of a disciplinary interview in the sense of article 6.1 of the collective agreement, notwithstanding the confusing communication of Mr. Crosby to Mr. Pichette of August 23, 1991.

It is well recognized that an employer has the right to put an end to the employment of someone who has demonstrated an inability to show up for work. If the level of absenteeism proves to be extraordinary, and the employee offers insufficient explanation to assure better attendance in the future, the employer can terminate the employment contract for non-culpable reasons, even accepting that the employee has no control over his absences. This is what transpired in the instant case.

It is evident that the absenteeism of Mr. Ghanouchi was unacceptable and that the Company had no reason to believe that his attendance would improve in the future. Given all of the circumstances, the Arbitrator must come to the conclusion that the decision of the Company was just and reasonable, and that there was no violation of the terms of the collective agreement. For these reasons the grievance is dismissed.

March 13, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR