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CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2447

Heard in Montreal, Tuesday, 8 February 1994
concerning
CANADIAN NATIONAL RAILWAY COMPANY

and
CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS

EX PARTE

DISPUTE:

Unjust loss of seniority and employee status of Mr. J.E. Stanley.

EX PARTE STATEMENT OF ISSUE:

Mr. J.E. Stanley concluded a period of educational leave on May 25, 1993. On May 13, 1993, the grievor contacted the Company and requested a further leave of absence and asked to be advised of his rights for possible severance entitlement. The Company advised that they would contact him in connection with his request. On August 14, 1993, the grievor received a registered letter dated July 31, 1992, indicating that his services were dispensed with, effective immediately, for "failure to exercise upon completion of educational leave".

The Union grieved the matter on the basis that the Company had not responded to Mr. Stanley's requests made during the telephone conversation of May 13, 1993, and claimed that under all of the surrounding circumstances, Mr. Stanley had been unjustly discharged contrary to Articles 11.4, 11.5, 12.5, 13.8, 17.5, 17.6 and 17.8 of Agreement 5.1

The Company claims they forwarded a letter dated May 17, 1993, to Mr. Stanley providing him with the requested information, which Mr. Stanley claims he never received. The Company further claims that they have not violated any of the provisions of the Agreement.

FOR THE BROTHERHOOD:

(SGD.) T. N. STOL

NATIONAL VICE-PRESIDENT

There appeared on behalf of the Company:

E. Vick - Labour Relations Officer, Moncton
W. E. Agnew - Manager, Labour Relations, Moncton
O. Lavoie - System Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

T. Barron - Representative, Moncton
J. Stanley - Grievor

AWARD OF THE ARBITRATOR

Having regard to the material filed, and to the evidence of the grievor, the Arbitrator is satisfied that Mr. Stanley was not sufficiently apprised of the Company's view that he was under an obligation to exercise his seniority within a ten day period following his discussions with Mr. Agnew. While I am satisfied that both Mr. Stanley and Mr. Agnew proceeded in good faith, the

evidence indicates that there was a miscommunication between them. I accept the evidence of the grievor that he understood that he would have the opportunity of reviewing a letter from Mr. Agnew, setting out his options, including the possibility of taking a severance. I also accept his evidence that he did not receive the letter until well after the Company purported to terminate his services.

At the centre of the dispute between the parties is the issue of whether the grievor would have been entitled to a leave of absence for the period of his articles at law, following the completion of his LLB degree. In this regard articles 17.6 and 17.7 of the collective agreement provide as follows:

17.6 Leave of absence for educational purposes may be granted to employees in accordance with the company's regulations. The Regional Vice-President of the Brotherhood will be informed when such leaves are granted. Such employees who return to the service between school terms, or prior to terminating the educational course for which leave of absence has been granted, will not be permitted to exercise their seniority.

17.7 Leave of absence under article 17 shall not be granted for the purposes of engaging in work outside the Company service, except in cases involving sickness, or when made the subject of mutual agreement between the proper officer of the Company and the Regional Vice-President of the Brotherhood.

In the Arbitrator's view working under articles at law would plainly fall within the terms of article 17.7 of the collective agreement. While it is true that articles are part of a professional lawyer's training, they come only at the conclusion of his or her university course resulting in the granting of an LLB degree. Most significantly, except in the most unusual circumstances, the articulated student is gainfully employed by the law firm, corporation or government agency by which he or she is employed. That is clearly the case with Mr. Stanley. In the circumstances, I am satisfied that Mr. Stanley's entitlement to leave of absence during the course of his period of articles would be subject to the Company's approval under article 17.7 of the agreement. In other words, it could be achieved only by mutual agreement between the proper officer of the Company and the regional vice-president of the Brotherhood.

For the reasons related above, however, I am not satisfied that the Company was entitled to treat the grievor as having forfeited his seniority, and being subject to dismissal under the terms of article 13 of the collective agreement. The forfeiture of seniority under article 13.8 is subject to the time limits specified within the article calculated "... from the time he reports for duty". In the case at hand I cannot find that the grievor can be said to have reported for duty in the sense contemplated by article 13.8 of the agreement. In the result, the period of ten calendar days established in article 13.3 of the collective agreement did not come into effect as it applied to Mr. Stanley. Rather, Mr. Stanley was under a bona fide misimpression of his rights, rising out of a misunderstanding between himself and Mr. Agnew in the course of their telephone conversations of May 11 and May 13, 1993.

In the result, the grievance must be allowed, in part. The Arbitrator finds and declares that the Company wrongfully dismissed the grievor, and that his seniority is not forfeit. That conclusion, however, does not prevent the Company from now exercising such rights as may be appropriate with respect to allowing or disallowing any further continuance of the grievor's leave of absence. By the same token, Mr. Stanley is in a position, should his leave of absence be terminated, to exercise whatever options may be available to him under the collective agreement or the Employment Security and Income Maintenance Agreement, as the case may be.

Subject to the above observations, the matter is remitted to the parties, with the Arbitrator retaining jurisdiction in the event of any dispute between them having regard to the interpretation or implementation of this award.

11 February 1994

(sgd.) MICHEL G. PICHER
ARBITRATOR