CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2710

Heard in Montreal, Tuesday, March 12, 1996

concerning

INTERLINK FREIGHT SYSTEMS INC.

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Mr. J. Holz was on WCB because of a work related injury. The Company placed him on a modified work program. On May 19, 1994 he contacted his union representative because he had some concern about the modified work he was told to do. The Area Terminal Manager, Mr. Smith, on May 20, 1994, removed him from the security duties stating: "You have not displayed the work ethic, trustworthiness, or the dependability I require for the position." As a result, Mr. J. Holz was disqualified from WCB.

EX PARTE STATEMENT OF ISSUE

On May 19th, 1994, José Holz was advised by Mr. Smith that he would be required to do security checks of fellow employees. Since these were the people he worked with prior to the injury and with whom he would work upon his return, he expressed a concern about doing security checks to the Company and later to the union representative. The Company, upon learning that Mr. Holz contacted the Union, removed him from the modified work program and disqualified him from WCB.

In the past, when the injured worker was doing security work his physical duties would be walking through the buildings to ensure the doors were locked and fire checks. Never has any employee ever been asked to check his co-workers personal effects.

The Company created the security work to get Mr. Holz off WCB, and upon his being declared fit, he would be returned to his normal position. Therefore, they did not have the right to place him in a situation where he could be censured by his co-workers upon his return. Additionally, the Company did not comply with Article 8 as he was disqualified without an investigative interview.

The Union maintained that there were no grounds for disqualifying Mr. Holz and requested that he be reinstated onto WCB.

The Company declined the Union's request.

FOR THE UNION:

(SGD.) D. E. GRAHAM
FOR: EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

M. D. Failes	– Counsel, Toronto
B. F. Weinert	– Director, Employee Relations, Toronto

And on behalf of the Union:

D. W. Ellickson	– Counsel, Toronto
D. E. Graham	– Division Vice-President, Saskatoon

J. Holz – Grievor

The hearing was adjourned, at the request of the Union, to Tuesday, 9 April 1996

On Tuesday, 9 April 1996, there appeared on behalf of the Company:
M. D. Failes – Counsel, Toronto
B. F. Weinert – Director, Employee Relations, Toronto
And on behalf of the Union:
H. Caley – Counsel, Toronto
D. E. Graham – Division Vice-President, Saskatoon

AWARD OF THE ARBITRATOR

The sole issue to be resolved for the immediate purposes of this grievance is whether it is arbitrable. The Company submits that the actions complained of by the Union relate entirely to the treatment of the grievor in a non-bargaining unit position, and that on that basis it cannot claim any right to arbitrate a grievance filed on behalf of Mr. Holz. The Union asserts that notwithstanding that Mr. Holz was temporarily working in a non-bargaining unit position by reason of a physical disability, he is nevertheless entitled to the full protections of the collective agreement.

The facts pertinent to the preliminary issue are not in dispute. The grievor is a driver employed by the Company at its Port Coquitlam, B.C. terminal. He suffered a work related back injury on or about May 21, 1992 which prevented him from performing his regular bargaining unit job. He received BC Workers' Compensation Board benefits for the injury. In conjunction with the Workers' Compensation Board, the Company participated in a "work hardening" program by placing the grievor in a non-bargaining unit position. By an arrangement between himself, the Employer and the Workers' Compensation Board, the grievor then proceeded to work as a security guard with the Corps of Commissionaires, performing normal security guard duties. It appears that the grievor developed concerns about certain of the functions which he would be called upon to do, including spot security checks and searches of his fellow employees. It seems that upon expressing this concern the grievor was relieved of that obligation. On the same day, May 20, 1994, the grievor failed to appear for work when scheduled. In the result, the Area Manager, Mr. Wayne Smith, removed the grievor from the security guard duties. By a memorandum dated May 20, 1994 addressed to the grievor he stated, in part:

> Please be advised effective today I am disqualifying you from the security duties. You have not displayed the work ethic, trustworthiness, or the dependability I require for the position. I'm not confident you will even show up for your designated shift let alone ensure my directions are being followed. I am not prepared to take the chance that the premises will be left unattended. Please report back to your WCB case worker for direction.

Counsel for the Company further advises that following the grievor's removal from his security guard duties the Company was informed that he had been seen sleeping while on duty as a security guard. It is common ground that subsequent to his removal from security work the BC Workers' Compensation Board ceased to pay the grievor any further benefits.

The Union seeks a finding of this Office that the grievor was wrongfully removed by the Company from his security guard duties, as well as an order reinstating him to that work. It asserts that the disqualification of Mr. Holz from the security job was "akin to a termination or indefinite suspension and that this constitutes a breach of the Grievor's right to maintain employment with the Company unless removed for cause."

It does not appear disputed that the grievor was not paid by the Company during the term of his service as a security guard. He was paid by the Workers' Compensation Board, although it appears that the amount he received was roughly equivalent to his wages as a driver in the bargaining unit. There was no deduction of union dues from his earnings, although it does appear that his union dues were paid for the period in question, presumably by the grievor himself. There is no dispute that the grievor maintained a certain status as a bargaining unit employee. It is not disputed, for example, that the grievor retained and continues to retain his seniority in the bargaining unit, consistent with article 6.2.12 of the collective agreement which provides as follows:

> **6.2.12** Employees who are promoted to official or excepted positions shall have their names removed from the seniority list six (6) cumulative months after date of promotion, relief included. At

> any time during this six (6) month period, the employee may elect to revert, or be reverted by the Company, without loss of seniority.

The Company stresses that the grievor does retain his seniority in the bargaining unit. Its Counsel asserts that he has not been terminated, and that he retains full rights to claim bargaining unit work for which he is qualified, based on his seniority, or indeed to claim such modified work duties as might be available within the bargaining unit to accommodate his disability. It would appear, however, that there may be no such duties available, although that matter is not before me for determination. The Company's Counsel submits that there has been no derogation of the employee's rights under the terms of the collective agreement by the Company's decision to remove him from non-bargaining unit functions for which it found him to be ill-suited. Counsel submits that there cannot, in these circumstances, be any right of just cause protection for the duties of a position which is not covered by the collective agreement. In support of its position the Company refers the Arbitrator to the decision of Arbitrator J.F.W. Weatherill in **Re United Automobile Workers, Local 1535 and Northern Electric Co. Ltd.**, (1972), 24 L.A.C. 235.

Counsel for the Union submits that the grievor does, in these circumstances, retain all of the protections of the collective agreement, including rights relating to the just cause provisions in relation to discipline or discharge found in article 8 of the agreement which provides, in part, as follows:

> **8.1** An employee may only be disciplined or dismissed for just cause after an investigative interview is held in accordance with article 8.2.

Counsel submits that the only reason the grievor found himself working in a non-bargaining unit position is his medical disability, resulting from a work-related injury. He submits that to conclude that that physical disqualification, which led him to the non-bargaining unit position in the first place, could result in his being deprived of access to the protections of article 8 of the collective agreement would amount to discrimination on the basis of his disability, contrary to the **Canadian Human Rights Act**. Counsel submits that, in essence, the grievor must be treated as never having left the bargaining unit and should be seen as no less protected than employees with disabilities who were found by boards of arbitration to be discriminated against by reason of their termination through the operation of automatic discharge provisions in a collective agreement, based on a given period of absence. In this regard reference is made to the decision of the board of arbitration in **Re Toronto Hospital and Ontario Nurses' Association**, (1992), 31 L.A.C. (4th) 44 (P.C. Picher).

Counsel for the Union further refers the Arbitrator to cases which he submits confirm the arbitrability of the rights of employees in circumstances where they have been transferred out of a bargaining unit (**Re Steinberg Inc. (Trillium Meats) and United Food & Commercial Workers, Local 633**, (*1991), 24 L.A.C. (4th) 98 (O'Shea); and* **The Board of Governors of the Riverdale Hospital and Canadian Union of Public Employees, Local 79**, *an unreported award of a board of arbitration chaired by Arbitrator Paula Knopf dated June 24, 1994.* Reference is also made to **Re Dayco (Canada) Ltd. and National Automobile, Aerospace, & Agricultural Implement Workers Union of Canada**, (*1990), 73 D.L.R. (4th) 718, (Ont. C.A.)*.)

Given the novelty and significance of the issue raised in this case it is, I think, important to review closely the authorities advanced by both parties. The decision of the Ontario Court of Appeal in **Re Dayco** is of relatively limited value for the purposes of this dispute. That case involved a claim by retired employees to certain benefits negotiated under a prior collective agreement. The Company, which had gone out of business, took the position that the claims were no longer arbitrable as there was no subsisting collective agreement in place. That position was rejected by the Court in a decision which confirms the well-established proposition that rights which have vested under a collective agreement may be vindicated through arbitration, even though the term of the agreement under which such rights were established may have expired. More broadly, it can be seen as an example of collective agreement rights being available to persons who are not, in the narrow sense, "employees" actively working within a bargaining unit under the terms of a collective agreement.

In the instant case, however, there is no exception taken to that principle by the Employer. It does not dispute that the grievor remained a person with rights protected under the terms of the collective agreement, even though he was assigned to non-bargaining unit work by virtue of the arrangement with the Workers' Compensation Board. Such matters as the retention of the grievor's seniority rights, and his ability to reclaim work within the bargaining unit for which he might be qualified are not contested by the Company. As noted above, it takes exception only to the position of the Union to the effect that the grievor carried with him just cause protection in respect of his removal from the non-bargaining unit position.

The **Northern Electric** award concerned the termination of an employee who, although a bargaining unit member for a number of years, had been assigned to non-bargaining unit work outside Canada. Upon his return to Canada he was advised that he was discharged. Arbitrator Weatherill found the grievance filed on behalf of the employee to be arbitrable. The collective agreement there under consideration contained a provision, article 9.2.4, which the arbitrator found expressly conferred on an employee who had been assigned to a job not included in the bargaining unit the right to be "... returned to an available vacancy at the same grade level or lower than that held prior to his transfer out of the bargaining unit,". On that basis Arbitrator Weatherill found that the claim before him arose out of a dispute with respect to the application of the language in question, and that he therefore had jurisdiction to hear the matter. In considering the question before him, he commented, in a general manner, at p. 237 as follows:

> The preliminary issue of course does not touch on the merits of the grievor's discharge (and it was stated that the company found no fault with his work), but rather, the right of the grievor to return to the bargaining unit. It is true that the grievor was not in fact employed on a job within the bargaining unit at the time his employment was terminated. In many cases, it would seem that when an employee accepts transfer to employment with an employer in a job outside the bargaining unit, he accepts the risks of the conditions of employment affecting that job. He may come within some other bargaining unit; he may be in an unorganized group of employees; or he may be in a group excluded from any bargaining unit. As such, it may be that he would be subject to dismissal without right of recourse to any arbitration procedure established under a collective agreement. In the instant case, however, it is the union's contention that the grievor retained the right to be returned to the bargaining unit and that he may assert this right pursuant to the provisions of the collective agreement.

Once again, while the Arbitrator has no reason to disagree with the principles reflected in the **Northern Electric** case, it too is of limited value for the purposes of this grievance. As noted above, the Company takes no issue with the right of the grievor to return to a bargaining unit position for which he may be qualified, or indeed to grieve and arbitrate any dispute which may arise in respect of that question. It submits, however, that there is nothing in the rationale of the **Northern Electric** case to suggest that collective agreement protections, such as just cause standards, can be applied by a board of arbitration to the treatment of a person occupying a non-bargaining unit position, even though that person may continue to hold residual rights to return to the bargaining unit. As Counsel for the Company would have it, the grievor in the instant case is fairly described in the passage from the award quoted above, as having accepted the risk of non-bargaining unit employment, at least insofar as his treatment by the Employer for disciplinary purposes in that job is concerned.

The **Steinberg** award involved the discharge of a meat cutter for alleged irregularities in the recording of time sheets while he was temporarily promoted to a non-bargaining unit position as foreman. The employee was terminated and the employer took the position that he had no access to arbitration as he was terminated while he held a non-bargaining unit position. The arbitrator concluded otherwise. Firstly, he found that in fact the grievor had resigned his foreman's position prior to discharge during the course of the Company's disciplinary interview into his actions in relation to the time-card discrepancies. It appears that he handed his foreman's hat to the supervisors, declaring that he no longer wanted to be a foreman, and wished to return to the bargaining unit. The arbitrator notes that the employee symbolically returned his foreman's hat during the course of the meeting, making his intention clear. On that basis, as a first determination, the board of arbitration found that the employee had in fact resumed his status as a bargaining unit member prior to his termination, and on that basis had a right to grieve his discharge under the terms of the collective agreement. Alternatively, Arbitrator O'Shea found, at p. 109, that even if the grievor was discharged while still a foreman, he nevertheless retained a residual right under the terms of the collective agreement to return to the bargaining unit within a twelve month period of his original promotion to the foreman's position. He reasoned that the right of reversion, contained in article 8.08 of that collective agreement, being specifically referred to in the grievance document itself was sufficient notice to the employer that the grievor was exercising his collective agreement right to return to the bargaining unit.

In the Arbitrator's view, once again, the *ratio decidendi* of the decision in the **Steinberg** case must be seen as relatively limited for what it provides as guidance in resolving the dispute at hand. On the first branch of analysis, Arbitrator O'Shea found the grievance to be arbitrable because in fact the grievor surrendered his foreman's position and effectively returned to the bargaining unit before he was discharged. Alternatively, the learned arbitrator found that the grievor and union took the appropriate steps to exercise the employee's right to return to the bargaining unit within twelve months of his promotion, notwithstanding his purported discharge as a foreman. There is no

suggestion in the award, however, that the board considered that it had jurisdiction to arbitrate the grievor's entitlement to continue to hold his foreman's job outside the bargaining unit.

The case before me does not involve any dispute about the right of the grievor to return to the bargaining unit, or to have full access to any work within the bargaining unit for which he is qualified. The **Steinberg** case might be more instructive if, in fact, the employee in question had sought to grieve his removal from the position of foreman. That would have made that case more meaningfully comparable to the instant grievance. In the result, like **Dayco** and **Northern Electric**, the decision in the **Steinberg** case is further authority for the general notion that persons who leave a bargaining unit may nevertheless retain residual rights which can be vindicated through arbitration. However, in **Steinberg**, as in **Northern Electric**, what was deemed arbitrable was the right of the employee to have access to work within the bargaining unit. Neither case is authority for exercising the arbitration provisions of a collective agreement to enforce a right of employees to hold non-bargaining unit positions. If anything, they are consistent with the **Northern Electric** case where, at p. 238 Arbitrator Weatherill made the following comment:

> Whether or not the grievor was entitled to be retained in any job outside the bargaining unit is clearly not a matter in which I would have jurisdiction, as my jurisdiction arises pursuant to the collective agreement.

The **Toronto Hospital** case does not concern the access of employees, through the grievance and arbitration provisions, to redress from removal from non-bargaining unit positions. Rather, it is another of a line of cases which have held that an employer cannot invoke the automatic termination provisions of a collective agreement against an employee whose absence is caused by illness or disability. In that case the collective agreement provided that a nurse would lose all service and seniority, and be deemed terminated if she "... is absent from work due to illness or disability for a period of thirty (30) months from the time such absence commenced."

The application of that provision was found to be contrary to article 4(1) of the **Ontario Human Rights Code, 1981** (S.O. 1981, C.53, as amended). The board of arbitration found that the collective agreement provision in question was contrary to the **Human Rights Code** because, as noted at p. 69 "... by failing to provide the grievor with a review of her termination by a standard of just cause, the hospital has denied the grievor treatment equal to that accorded to the employees in the bargaining unit as a whole."

What does the award in the **Toronto Hospital** case provide by way of guidance in this grievance? That award appears to rest, quite properly I think, on the proposition that an employee cannot be disadvantaged as regards his or her treatment within the bargaining unit, compared to other employees, by reason only of his or her physical disability. If the **Toronto Hospital** standard is applied, the Arbitrator has some difficulty understanding how it can be asserted that the grievor in the instant case is disadvantaged as compared with other employees in the bargaining unit, or indeed other employees generally, as a result of the Company's denial to him of the right to a just cause arbitration with respect to his removal from the non-bargaining unit position of security guard. In that regard, he is treated no better and no worse than anyone else in the workplace, as it is common ground that no-one occupying the position of security guard can claim a right of just cause protection for discipline incurred in that position.

However, Counsel for the Union puts a different turn on it. He submits that "but for" the grievor's disability, he would not have found himself working as a security guard. Therefore, he argues, he must be viewed as a bargaining unit employee who, because of his disability, is forced into a non-bargaining unit position in which he finds himself discriminated against as compared with his former bargaining unit colleagues, who continue to retain the right to the just cause protections of the collective agreement. While a certain logic might appear to underlie that submission, in the final analysis it goes beyond the bounds of the concepts of equality and non-discrimination. To conclude that the grievor, who moves into a non-bargaining unit position by reason of an arrangement between the Company and the Workers' Compensation Board, brings with him the full panoply of protections under the collective agreement, protections not available to other persons working in the same classification, and indeed protections which would not be available to other bargaining unit employees who might voluntarily transfer to the same work, goes beyond notions of equality. It confers upon the disabled individual rights which are greater than those of other employees in the workplace in a manner not contemplated, either under the collective agreement or the **Canadian Human Rights Act**. In the Arbitrator's view, the concepts of equal treatment and non-discrimination in employment under the **Canadian Human Rights Act** were never intended to go so far. Could the grievor, in his capacity as a security guard, invoke the seniority provisions of the drivers' collective agreement to protect himself in the event of a layoff of security guards? I do not see how those provisions could bear on his employment as a security guard, any more than I can see how the just cause provisions of the drivers' collective agreement can bear of the method or measure of his

discipline as a security guard. Nor do I see how to so conclude is to discriminate against him on the basis of his disability.

Counsel for the Union argues that, in principle, a person in the grievor's circumstance would be at extreme peril if, as he submits, an employer could move a disabled employee into a non-bargaining unit position and thereafter dismiss him or her at will. That, however, has not happened in the instant case. More importantly, as the cases disclose, there might be substantial grounds upon which a disabled employee could, in that circumstance, obtain protection by reason of his or her residual rights as a member of the bargaining unit. It may well be that in such a circumstance the employee and Union could properly invoke an implied understanding that an inability to perform the modified duties of the non-bargaining unit position should not be seen as justifying the termination of the employee for the purposes of bargaining unit work.

Finally, Counsel for the Union relies on the **Riverdale Hospital** award. That case involved the transfer of a registered nursing assistant from a full-time position to part-time work by reason of physical disabilities occasioned by a series of automobile accidents. The modified part-time work given to the grievor was offered by the employer as an accommodation for her physical restrictions. As a full-time employee the grievor was a member of a bargaining unit represented by the Canadian Union of Public Employees. The part-time work, however, was not covered by a collective agreement, as no union represented the part-time employees of the hospital. As the award reflects, the employee in question declined to resign her full-time position, and grieved when the employer purported to transfer her from full-time to part-time status. In that case the collective agreement contained a provision, article 11.06, which provided that an employee could not be transferred by the hospital to a non-bargaining unit position "without his consent except in the case of temporary assignments not exceeding six (6) months. Such employees on temporary assignments shall remain members of the bargaining unit."

The Union argued, in part, that it was contrary to the **Ontario Human Rights Code** to effectively exclude the grievor from the bargaining unit by reason of conditions precipitated by her physical disability. The Union also argued the duty to accommodate the grievor by keeping her in the bargaining unit. The majority of the board of arbitration sustained the argument that the employer could not force the grievor out of the bargaining unit by reason only of her physical disability. At pp. 16-17 it reasoned, in part, as follows:

> The facts of the case at hand establish that, but for the grievor's disability, she would not have been transferred out of the bargaining unit by the Employer. The Employer had the grievor working in the feeding program on less than a full-time basis and at the same time retained her in the full-time bargaining unit for a lengthy period. The Employer then chose to transfer her out of the bargaining unit against her will because there was no prognosis of an ability to increase to full-time hours or a higher level of performance in a reasonable future. There was no intention to discriminate against her. We are satisfied that the Employer meant no evil and intended only to comply with its carefully thought out policy of working towards full rehabilitation and "work hardening" as it calls it. However, the effect of transferring the grievor out of the bargaining unit was that it imposed penalties and restrictive conditions upon her that are not imposed on other members of the bargaining unit. The grievor was penalized by loss of bargaining unit status and the attendant loss of benefits, loss of the right to grieve and loss of the protections of just cause under the collective agreement, to name a few. The restrictive conditions imposed are that she is now subject to unfettered management rights as opposed to the protections available to her previously under the collective agreement. Therefore, the transfer out of the bargaining unit on the basis of her physical disability must be seen as discriminatory in effect, although there was no intention to discriminate.

Further, in considering the question of equality and discrimination, the majority commented further, at p. 20 of the award, as follows:

> ... Other employees in this bargaining unit are entitled to remain in the bargaining unit under Article 11.06 and cannot be transferred out against their will. The grievor in our case was treated differently because of her disability and was transferred out of the bargaining unit because of her disability. As such, she has been subjected to unequal or different treatment. The Employer must give her the benefit of the protections under Article 11.06. Only by establishing that an undue burden would be placed on the Employer can the Employer escape these obligations. But the burden of asserting such a hardship falls on the Employer. See *Re Rothmans, Benson & Hedges*

Inc., Re Marianhill, Lancia-Bravo Foods, Corporation of City of Stratford and as upheld on judicial review by decision released April 19, 1991, *North Bay Hospital Commission Operating the North Bay Civic Hospital* and *Etobicoke General Hospital, supra*.

In the result, the grievance was allowed. The board of arbitration found that although the grievor in that case worked weekly hours which would not normally bring her work within the bargaining unit, she was nevertheless entitled to retain her status as a bargaining unit employee, partly on the basis that she could not be forced out of the bargaining unit without her consent, that to force her out on the basis of her disability would be discriminatory as compared with the treatment of other employees and, finally, that the hospital must, as part of its duty of accommodation, allow the employee to retain her bargaining unit status even though she would continue to work the reduced hours.

This Office has no reason to disagree with the principles, reasoning and result reflected in the decision of the majority of the board of arbitration in the **Riverdale Hospital** case. It is important, however, to appreciate what was at issue in that grievance, as compared with the question at issue here. In that case the employee grieved the hospital's declaration that she was effectively terminated as a bargaining unit employee, although she would continue to work as a non-union employee assigned to part-time hours. On the basis of clear language within the collective agreement preventing removal from the bargaining unit without an individual's consent, as well as the prohibitions against discrimination in the **Ontario Human Rights Code** and the duty of accommodation, the board of arbitration concluded that the employee could not be forced out of her bargaining unit position by reason of her physical disability. The case before me, however, is not the same as that before the board of arbitration in **Riverdale Hospital**. There is no suggestion, in the instant case, that the Company has sought to terminate the grievor as a bargaining unit employee. On the contrary, it reiterates that he remains an employee in the bargaining unit for all purposes, and may claim a bargaining unit position for which he is qualified, on the basis of his bargaining unit seniority. Further, it appears to be accepted by the Company that he remains entitled to grieve any alleged failure of the Company to afford him reasonable accommodation in a bargaining unit position. The Employer cannot agree, however, that the duty of accommodation extends to exporting or expanding the terms and conditions of the collective agreement so as to apply them to non-bargaining unit positions, including the position of security guard which was held temporarily by the grievor.

Upon a review of the authorities cited, and the facts of the instant case, the Arbitrator is of the view that the Company is correct. If, in fact, the Employer had purported to terminate Mr. Holz from his employment as a driver in the bargaining unit the case argued by the Union would be compelling and, I think, successful. For the Company to argue that an employee should be terminated from the bargaining unit because he was unable to perform a non-bargaining unit job which he occupied only by reason of his physical disability would, I think, fall within a prohibited ground of discrimination. However, to hold, as the Union urges, that the grievor became a security guard who, by reason of his disability, enjoyed rights, as a security guard, to collective agreement protections such as the just cause provisions of article 8 of the collective agreement which applies to truck drivers, would overstep the line which properly protects equal treatment and non-discrimination, and would effectively confer upon the grievor rights beyond those enjoyed by his peers in the bargaining unit, or his peers in the non-bargaining unit position of security guard.

In the Arbitrator's view the grievor can no more grieve his removal from the security guard work than he could grieve the loss of his security guard's job if, for example, the Company had implemented a layoff or decided to contract out the security guard work in some different manner. That would not, of course, affect or limit such rights as he might assert to return to work as an employee within the bargaining unit. However, in keeping with the principles expressed by Arbitrator Weatherill in the **Northern Electric** case, there are no contractual collective agreement terms which attach to the work performed by the grievor as a security guard. As my authority arises exclusively under the terms of the collective agreement, I am without jurisdiction to determine whether the grievor should be entitled to hold a job outside the bargaining unit. While any attempt on the part of the Employer to deprive the grievor of his residual right to return to the bargaining unit or to retain his status as a bargaining unit member would clearly be arbitrable, no such issue arises in the instant case.

For the foregoing reasons the Arbitrator finds that the grievance is not arbitrable, and it is therefore dismissed.

May 7, 1996

(signed) MICHEL G. PICHER
ARBITRATOR