CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2712

Heard in Montreal, Wednesday, 13 March 1996

concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

On September 12, 1995 the Railway discharged Mr. E. Jr. Féquet.

UNION'S STATEMENT OF ISSUE:

The Union submits that the Railway does not have the right to negotiate individual contracts with employees, concerning conditions of employment, avoiding the Union.

There does not exist within our collective agreement any classification of student.

This employee was not called to an investigation before he was discharged.

The Railway did not give notice of lay off to this employee.

The Union considers the there has been a violation of Preamble 1, 4, 6 and 10 and articles 17:01, 21:02(a). 21:02(b), 28:01, 28:02, 28:08 and 37:06 as well as all other pertinent article in our collective agreement.

The Union requests the return to work of this employee without loss of seniority and that he be fully compensated for all loss which he has suffered, with interest.

The Railway declined the claims of the Union and rejects its request.

COMPANY'S STATEMENT OF ISSUE:

At the time of his hiring on May 22, 1995, Mr. Féquet agreed that with his status of student, his employment was for the summer period only. Furthermore, Mr. Féquet advised the QNS&L that he would quit his employment about August 26, 1995 in order to complete his studies.

The Union filed a grievance and claims that Mr. Féquet was discharged and requests his reinstatement.

The QNS&L maintains that this matter cannot be the object of a grievance and rejects the demand of the Union.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) B. ARSENAULT	(SGD.) A. BELLIVEAU
GENERAL CHAIRMAN	DIRECTOR, EMPLOYEE RELATIONS

There appeared on behalf of the Company:

R. Monette	– Counsel, Montreal
A. Belliveau	– Director, Employee Relations, Sept-Îles
G. Paquet	– Personnel Supervisor
M. Lamontagne	– Superintendent, Transportation & Traffic, Customer Services, Sept-Îles

[TRANSLATION]

And on behalf of the Union:

R. Cleary	– Counsel, Montreal
B. Arsenault	– General Chairman, Sept-Îles

AWARD OF THE ARBITRATOR

The pertinent facts in this grievance are not in dispute. In 1994, the Company began hiring students to work as relief trainmen in the transportation department for the summer vacation period. That practice was renewed in 1995, when twelve students were hired. It is agreed that one of the conditions of employment for the students was that they would terminate their employment at the end of the summer, to return to their studies. According to Counsel for the Company, the Company would have refused to offer summer employment to a student who did not accept that this was, from the outset, temporary employment for the period of summer vacation. Except for the conditions of hiring, the students were paid and treated for all purposes like employees under the collective agreement.

It appears from the evidence that during the summer the Employer asked the students for the precise date of their departure at the end of the summer season. It is in that context that the grievor, Mr. Féquet, who worked in the transportation department as a student for a second summer in 1995, furnished to Mr. Rodrigue Normand of the Company a note dated July 14, 1995 which reads as follows:

> As you have requested, I am advising you of the date when I must return to school. I anticipate leaving Sept-Îles at the end of the last week of August, that is the 26th or 27th.

In fact Mr. Féquet's plans changed. Firstly, he did not leave at the end of August, and his period of employment lasted until September 10. Secondly, he decided to put off returning to school at Carleton University in Ottawa until January 1996. Thus he asked Mr. Ghislain Paquet, Personnel Supervisor, if there was a possibility of an extension of his employment after the summer season. Mr. Paquet categorically advised him that the conditions of his hiring must prevail and that his employment would be terminated.

On September 18, 1995, the Union filed a grievance alleging, among other things, that the employment contract and the lay off or discharge of Mr. Féquet contravened the provisions of the collective agreement. Notably, Counsel for the Union claims that there is no recognition of students in the collective agreement, nor any disposition which, either directly or indirectly, allows the negotiation of individual contracts of temporary employment for students. According to Counsel, there is nothing which prevents the hiring of persons who are college or university students, as long as these persons are treated like all other employees for the purposes of the collective agreement. According to him the rules of employment which are imposed under the collective agreement do not permit the negotiation, from the outset, of temporary employment contracts on an individual basis. Therefore, the Company could not, he argues, require that a student provide a resignation for the end of the summer, either verbally or in writing, as a condition of hiring. All contracts to that effect would be void, in view of the rights and obligations in the collective agreement, which must predominate. In that case, submits Counsel, the Company must place the grievor on layoff in conformity with the dispositions of the collective agreement, after a notice of fifteen days. As well, he argues, if there was just cause for discharge, Mr. Féquet could only be terminated if the Company followed the investigation procedures in the agreement.

Counsel for the Company does not deny that Mr. Féquet and the other students were treated like employees with the protections of the collective agreement. He stresses that in the case of the students union dues were deducted from their salaries and that, in the case of Mr. Féquet, his name was included on the seniority list at the beginning of September 1995. According the Counsel for the Company, it is simply a matter of acceptance by the Company of Mr. Féquet's resignation as it was communicated in his letter of July 14, save for a slight adjustment of the date of his departure.

Counsel for the Company draws the Arbitrator's attention to the jurisprudence to the effect that the voluntary resignation of an employee, duly accepted by the employer, is irrevocable and puts an end to the employment relationship. He submits that there is nothing which prevents the Company from requiring that students, as a first condition of employment, agree in advance to retire at the end of the season of vacation relief.

The Arbitrator cannot accept the position pleaded by the Employer. As indicated by Counsel for the Union, it is well established in Canadian labour relations law that when a union is accredited as the sole bargaining agent for all

employees in a bargaining unit, and when a collective agreement is in place, it is no longer possible for the employer to negotiate separate contracts, on an individual basis with employees, where those contracts stipulate terms and conditions of work other that those which are found in the collective agreement. That principle, so fundamental to the regime of labour relations, was commented upon by the Supreme Court of Canada in **Syndicat catholique des employés de magasins de Québec Inc. c. Cie Paquet Ltée**, [1959] R.C.S. 206 (Judson J.) at page 212:

> ... There is no room left for private negotiation between employer and employee. Certainly to the extent of the matters covered by the Collective Agreement, freedom of contract between master and individual servant is abrogated. ...

(*See also:* **Canadian Pacific Railway Co. v. Zambri**, *[1962] R.C.S. (Judson J.) 609 at p. 624,* **McGavin Toastmaster Company v. Ainscough**, *(1975) D.L.R. 1 (Judson J.) at p. 6,* **et General Motors v. Brunet**, *[1977] 2 R.C.S. 537 at p. 549*.)

In the instant case, before evaluating the arguments of the Employer to the effect that this is a simple case of voluntary and irrevocable resignation by the grievor, the Arbitrator must first comment on the legitimacy of the individual contract which required, from the outset, the resignation of the grievor at a fixed date as a first condition of his hiring. If it was not permitted to the Company to negotiate such a contract on a individual basis, I cannot see how it can now plead the fruit of an illegal contract as a defence of the grievance.

It appears clear to me that the collective agreement does not recognize the hiring of a particular class of employees, student or otherwise, who retain their positions only by reason of an undertaking to quit their employment, on a preset date, or for a predetermined reason. The right to negotiate wages and terms and conditions of work remains with the Union, as stated in article 1 of the Preamble of the collective agreement:

> **1.** The right to negotiate contracts, rules, rates and working conditions for employees shall be vested in the regularly constituted committee of the United Transportation Union, Local 1843 (T, E, & CR).

In light of this article, and the jurisprudence cited above, there is no place for the negotiation of separate contracts with conditions, in as much as those conditions would have effectively circumvent the rights established in the collective agreement for all employees, including those which concern their hiring, the duration of employment, layoff and discharge. Certainly, the collective agreement recognizes the individual right of an employee to resign voluntarily. But the creation by the Employer of a class of employees who are hired for a temporary fixed period, based upon a promise of resignation or by some other private arrangement, is simply not permitted. Therefore, I cannot give any weight to the "voluntary resignation" of Mr. Féquet pleaded by the Company. Once hired, the grievor could not be governed by the terms of employment negotiated independent of the Union, including the undertaking to resign. On the contrary, as an employee Mr. Féquet had a right to the full protections of the collective agreement. That implies that he could be laid off due to a reduction in work, at the end of the summer, if the Company respected the rules of notice and other procedures in the collective agreement in this regard.

The Arbitrator must therefore come to the conclusion that at the beginning of September 1995, the grievor was an employee in the bargaining unit who wished to continue his employment, and from whom the Company had not received or accepted any legitimate voluntary resignation in conformity with the collective agreement. For these reasons the grievance must be allowed.

The Arbitrator declares that the termination of employment imposed on the grievor by the Company in September 1995, in as much as its execution was based on his individual employment contract, constituted a violation of the collective agreement. I order that the Company reinstate Mr. Féquet into his employment, if he so desires, without loss of seniority and with compensation for loss of wages and benefits.

March 15, 1996

(signed) MICHEL G. PICHER
ARBITRATOR