

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2765

Heard in Montreal, Tuesday, 10 September 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Claim on behalf of Track Maintainer A. Perennou who was removed from his position of Track Maintenance Foreman at Lasarre, Quebec in December of 1991.

EX PARTE STATEMENT OF ISSUE

Between October 1989 and December 1991, the grievor held the position of Track Maintenance Foreman, responsible for rail maintenance from Mile 87.0 to 181.4 of the Taschereau Subdivision. In December of 1991, the Company discovered that the grievor's driver's licence was suspended. As a result of this, the Company removed the grievor from his position.

The Union contends: **1.)** that the Company unjustly dealt with the grievor by removing him from his position of Track Maintenance Foreman in violation of article 18.6 of agreement 10.1; **2.)** that the suspension of the grievor's licence did not prohibit him from operating railway (track) vehicles such as a Hi-Rail vehicle; and **3.)** that the Company violated all other relevant provisions of the collective agreement.

The Union requests that the Company be ordered to restore the grievor to the position of Track Maintenance Foreman forthwith and that he be compensated for all financial loss incurred as a result of this matter.

The Company denies the Union's contentions and declines its requests.

FOR THE BROTHERHOOD:

(SGD.) R. A. BOWDEN

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

M. S. Hughes	– System Labour Relations Officer, Montreal
N. Dionne	– Manager, Labour Relations, Montreal
R. I. Steeves	– System Manager, Productivity Improvement, Montreal
D. Laurendeau	– Assistant Manager, Labour Relations, Montreal

And on behalf of the Brotherhood:

D. W. Brown	– Sr. Counsel, Ottawa
R. A. Bowden	– System Federation General Chairman, Ottawa
R. F. Liberty	– System Federation General Chairman, Winnipeg
A. Trudel	– Federation General Chairman, Montreal

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that as a Track Maintenance Foreman the grievor, Mr. Perennou, was assigned to operate and oversee the use of a hi-rail equipped 3/4 ton truck. It does not appear disputed that the vehicle is regularly used to carry workers, material and tools, as required. The Company therefore required that the grievor be in possession of a regular classified driver's licence to enable him to operate the truck on public roadways, as well as on the Company's own property.

By his own fault the grievor's driver's licence was suspended on November 27, 1991. He therefore became disqualified from driving the Company truck. By way of adjustment the Company acceded to a local agreement whereby the grievor's position was assigned to another individual, with Mr. Perennou being assigned as a track maintainer, although it appears that his foreman's wages were maintained. However he later became displaced from the track maintainer's position by a foreman senior to himself, which resulted in the filing of this grievance by the Brotherhood.

The issue is whether the Company is obligated, as the Brotherhood contends, to have effectively accommodated the grievor's criminal or quasi-criminal conviction, to reorganize its local work force so as to enable him to continue in his functions as a foreman, notwithstanding the loss of his driver's licence. The Arbitrator sees no merit whatsoever to the Brotherhood's position. While it may be that the bargaining agent and the employer have different views of what is appropriate management, and indeed what may be fair, there is nothing within the terms of the collective agreement to suggest that it is not within the legitimate business interests of the Company to require that track maintenance foremen be in possession of a valid driver's licence. Nor is there any requirement for the Company to reorganise work assignments or duties and responsibilities to protect the interests of an individual convicted of an offence, and to save him or her from any possible loss of rank or income.

This Office has already had occasion to consider, in some detail, and to confirm the entitlement of the Company to require certain classes of track maintenance employees to operate trucks as a part of their duties and responsibilities, and to hold valid licences in that regard (*see CROA 2649*). If anything, the case is still stronger for concluding that persons who hold the higher responsibility of track maintenance foremen, who are expected to respond to emergency calls, sometimes alone, should legitimately be required to have such qualifications and licences.

Nor can the Arbitrator find in article 18.6, assuming that it does give substantive, rather than mere procedural, protection against all "unjust dealings" by the Company, (a matter currently under appeal before the Courts), a violation of such a standard by the Company in this case. The Arbitrator does not accept the submission of the Brotherhood that for the grievor to be dealt with justly in these circumstances requires the Company to reduce the qualifications or requirements for his position, or rearrange the assignment of other staff to protect him from the consequences of the criminal sanction imposed upon him. Whatever standard of "justice" the Brotherhood might prefer, in the Arbitrator's view the demotion of Mr. Perennou without a reduction in his foreman's wages is well within any reasonable standard of justice. Nor does his subsequent displacement by a senior foreman, a consequence contemplated by the collective agreement, suggest any different conclusion.

For the foregoing reasons the grievance is dismissed.

September 14, 1996

(signed) MICHEL G. PICHER
ARBITRATOR