

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3007

Heard in Montreal, Tuesday, 8 December 1998

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE - UNION:

Payment of regular wages to Terrance Sellier for March 6, 1998.

UNION'S EX PARTE STATEMENT OF FACT:

On March 6, 1998, Mr. Sellier was at home awaiting instructions to report for training at the Intermodal Terminal at Vaughan, Ontario. His wages were being paid pending commencement of training, at company convenience.

Mr. Sellier was scheduled to commence training on March 9, 1998. However, he did not respond to a pager message on March 6, and was thus unable to commence his training until March 12, 1998.

UNION'S EX PARTE STATEMENT OF ISSUE:

The Company deducted Mr. Sellier four days' wages, for March 6, 9, 10 and 11. The Union argued that Mr. Sellier was not required for service on March 6. While the Union conceded that his failure to answer to page made him liable to being deducted for those days for which he was required for training, there was no loss to the Company on March 6 itself

The Union progressed a grievance, requesting that Mr. Sellier be paid his regular wages for March 6. The Company declined the grievance.

DISPUTE - COMPANY:

Claim for employment security compensation for March 6, 1998, on behalf of Mr. T. Sellier.

COMPANY'S EX PARTE STATEMENT OF FACT:

Upon his return to service in April 1997 in accordance with the

Arbitrator's award in CROA 2847, Mr. T. Sellier elected to exercise his seniority into a position at Vaughan Intermodal Terminal. Inasmuch as required training could not be provided to Mr. Sellier immediately he was placed on temporary employment security status pending availability of training.

On March 6, 1998, two messages were left on Mr. Sellier's pager requesting that he contact the Intermodal Office as intentions were to commence his training on Monday, March 9. Mr. Sellier did not contact this office as requested until Wednesday, March 11, 1998, at which time arrangements were made for him to commence training on Thursday, March 12, 1998.

Mr. Sellier was deducted employment security benefits for March 6, 9, '10 and I I as a result of his unavailability to the Company.

COMPANY'S EX PARTE STATEMENT OF ISSUE:

The Union progressed a grievance stating that Mr. Sellier was not required for service on March 6, 1998, and that he ought to have been paid compensation for March 6, 1998. The Union conceded that Mr. Sellier's failure to answer the page made him liable to being deducted compensation for March 9, 10 and 11. The Union's grievance requested that Mr. Sellier be compensated for March 6, 1998.

The Company has declined the grievance.

FOR THE UNION:

(SGD.) RICHARD PAGT

EXECUTIVE VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) CAROL GRAHAM

FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

R. Hampel - Labour Relations Officer, Calgary
C. Graham - Labour Relations Officer, Calgary

And on behalf of the Union:

P. J. Conlon - Divison Vice-President, Toronto
S. Mercier - Local Chairman, Montreal
R. Surnmerside - Local Representative, Montreal

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that at the time material to this grievance Mr. Sellier was on a form of employment security. His regular wages were being maintained, although there was no active work available for him pending his being called for training in Intermodal Service.

It is not disputed that the Company decided that his intermodal training should commence on March 9, 1998. To that end it called him on March 6. It is common ground that the grievor does not have a telephone, but utilizes a beeper. Although he was called twice on the 6th, Mr. Sellier did not respond. He also failed to respond to a number of calls made on subsequent

days, thereby missing the training scheduled for March 9, 10 and 11, 1998. He was, eventually contacted and did commence his training on March 12. In the circumstances the Company deducted his wages for March 9, 10 and 11. It also deducted for March 6, on the basis that he was not available for work that day. The sole issue in these proceedings is whether the grievor was properly deprived of his wages for March 6.

Upon a review of the submissions of the parties the Arbitrator is satisfied that the Union's position is more compelling, in the case at hand. Normally, the right of an employee to retain the extraordinary protection of employment security is predicated on the individual being available for work when called to do so. In the case at hand there is no suggestion that the grievor was being called to work on March 6. Rather, what occurred was a failure of the grievor to respond to a telephone call made to him on March 6 for the purpose of being available to work on March 9, the day his training was to commence. In my view it is the failure of the availability to work, and not the mere failure to answer a telephone call, which is at the root of the prerogative of the Company to reduce an employee's employment security payments or incumbency. That is not what transpired in the instant case, as there was no work which the Company wished to assign the grievor to be performed on March 6.

The grievance is therefore allowed. The Arbitrator therefore directs that the grievor be compensated for wages and benefits lost in respect of March 6, 1998.

December 14, 1998

MICHEL G. PICHER