

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3302

Heard in Calgary, Wednesday, 13 November 2002

concerning

CANADIAN PACIFIC RAILWAY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

The dismissal of Conductor R.P. Keeler of Moose Jaw, Saskatchewan.

JOINT STATEMENT OF ISSUE:

On January 7, 2002, Conductor R.P. Keeler was dismissed for
:

"your role in the organization of an illegal strike commencing on October 11, 2001 at and around Moose Jaw, Saskatchewan, resulting in significant disruption to train services."

The Union appealed the dismissal on the grounds that the investigation was neither fair nor impartial and that the discipline was excessive and inconsistent given the circumstances.

The Union seeks the reinstatement of Conductor Keeler without loss of seniority and benefits, and with payment for all lost wages.

The Company has declined the grievance.

FOR THE COUNCIL:

(SGD.) D. H. FINNISON
for: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) C. M. GRAHAM
FOR: GENERAL MANAGER OPERATIONS

There appeared on behalf of the Company:

M. Shannon - Counsel, Calgary
C. M. Graham - Labour Relations Officer, Calgary

C. Carroll	- Director, Labour Relations, Calgary
J. Copping	- Manger, Labour Relations, Calgary
D. Guérin	- Labour Relations Officer, Calgary
M. Franczak	- General Manager, Field Operations
G. Johnson	- Service Area Manager
G. Denham	- Manager Operations
R. Fosberg	- Manager Road Operations
R. Biskett	- Road Manager

And on behalf of the Council:

M. A. Church	- Counsel, Toronto
L. O. Schillaci	- General Chairperson, Calgary
D. H. Finnson	- Vice-General Chairperson, Calgary
B. L. McLafferty	- Local Chairperson, Moose Jaw
R. P. Keeler	- Grievor

AWARD OF THE ARBITRATOR

The evidence before the Arbitrator, which is extensive and involves a substantial number of employee interviews which have been fully reviewed by the Arbitrator, confirms the unfortunate fact that Conductor R.P. Keeler was a principal organizer of an illegal strike conducted against the Company at Moose Jaw commencing October 11, 2001. It is not disputed that between October 11 and 14, some 116 running trades employees booked sick, causing substantial disruption in Company operations throughout Western Canada and the mid-western United States, occasioning significant delays in service and a financial loss estimated at one-half million dollars. The weekend in question involved significant upheaval to all concerned, and included an expedited consent order of the Canada Industrial Relations Board declaring an illegal strike contrary to section 91 of the **Canada Labour Code**, and directing the respondent unions (CCROU, UTU & BLE) to accordingly advise their members.

The deliberate organizing of an illegal strike is among the most severe forms of employee misconduct possible under our law. An unlawful work stoppage strikes at the very stability of collective bargaining established under the **Canada Labour Code** which prohibits any such job action during the term of a collective agreement, and requires recourse to grievance and arbitration procedures to resolve any workplace disputes. So understood, organizing an illegal work stoppage is a fundamental attack on the collective bargaining process mandated by the **Code**.

The facts of this case are unfortunate. The grievor, who is forty-seven years of age, has more than twenty-three years of service with the Company. While his disciplinary record is not exemplary, he had only minor discipline on his record at the time of the events which are the subject of this grievance. In aggravation, however, it is clear to the Arbitrator that Mr. Keeler initially denied any involvement in the organizing of the illegal strike, as evidenced by a rebuttal document filed in his name during the course of the Company's investigation. He remained in concealment only until the statement of a co-conspirator made it impossible for him to deny his seminal involvement in the organizing of the illegal strike at Moose Jaw. While the extensive record which the Arbitrator has reviewed does disclose that Moose Jaw can fairly be characterized as a troubled workplace, a circumstance no doubt attributable to both union and management, nothing in the grievor's personal circumstances, or the circumstances generally reflected as prevailing at Moose Jaw, would justify or mitigate the gravity of the offence committed by Mr. Keeler.

Nor can the Arbitrator give substantial weight to the suggestion of counsel for the Council that the Company has been discriminatory in its treatment of Mr. Keeler. That argument is based, in substantial part, on the fact that another employee who worked with Mr. Keeler to organize the illegal work stoppage was given the benefit of a deferral of discipline, with an assessment of sixty demerits. Significantly, unlike the grievor, that employee came forward voluntarily to admit his own involvement, as well as that of Mr. Keeler, thereby providing substantial assistance in the Company's investigation of the illegal work stoppage. As difficult as the circumstances may be for all concerned, the Arbitrator can find nothing improper in the Company's actions, which are not unlike the process of plea bargaining sometimes essential to the successful functioning of the criminal prosecution system.

The grievor's recent record is also not supportive in the case at hand. As reflected in the prior award of this Office in **CROA 3301**, a case involving improper efforts by Mr. Keeler to obtain confidential Company documents, the Company has reason to be concerned as to the integrity and reliability of Mr. Keeler. Any concerns in that regard were obviously not diminished by the unfortunate fact of his involvement as a principal organizer of a destructive work stoppage, the facts of which he admitted only when he had little or no alternative. Nor is there any material before the Arbitrator to sustain the suggestion that the grievor was denied a fair and impartial investigation.

For the foregoing reasons the grievance must be dismissed.

November 19, 2002

(signed) MICHEL G. PICHER
ARBITRATOR