

IN THE MATTER OF AN ARBITRATION

BETWEEN

**CANADIAN NATIONAL RAILWAY COMPANY
(the “Company”)**

-and-

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
SYSTEM COUNCIL NO. 11
(the “Union”)**

**RE: GRIEVANCE OF THE TERMINATION OF
S&C COORDINATOR, BRADELY BETKER’S EMPLOYMENT**

ARBITRATOR: MICHEL G. PICHER

APPEARANCES FOR THE COMPANY:

B. Laidlaw	– Manager Labour Relations
S. Grou	– Senior Manager Labour Relations
C. Hamblin	– Manager S&C
T. Orr	– Senior Manager S&C, Western Region

APPEARANCES FOR THE UNION:

K. Stuebing	– Counsel, Caley Wray
B. Strong	– Senior General Chairman
L. Couture	– International Staff Representative
L. Hooper	– Assistant General Chairman
B. Betker	– Grievor

A hearing in this matter was held in Montreal on December 16, 2013.

AWARD

This grievance concerns the termination of S&C coordinator Bradley Betker for allegedly incurring and claiming unauthorized overtime pay and making a false claim in relation to hotel accommodation. The dispute is outlined in a joint statement of issue filed at the hearing, which reads as follows:

DISPUTE:

The Company's termination of S&C Coordinator Bradley Betker.

JOINT STATEMENT OF ISSUE:

S&C Coordinator Bradley Betker was dismissed from Company service for 'incurring necessary and unauthorized overtime pay on July 10, 2013; unauthorized travel to Thunder Bay on July 11, 2013 resulting in unnecessary expenses for July 11, 2013, and unauthorized overtime on July 13, 2013; falsely submitting a claim for hotel accommodation on July 12, 2013. All time held out of service from August 21, 2013 to date is deemed a suspension.'

The Union contends that there is no cause for discipline in the circumstances or, in the alternative, that the penalty of discharge is excessive and unwarranted.

The Union requests that the Mr. Betker be reinstated without loss of seniority, seniority rights, benefits, pension and that he be made whole for all lost earnings, with interest. In the alternative the Union requests that the penalty be mitigated as the arbitrator sees fit.

The Company disagrees with the Union's request.

For the Union:
B. STRONG

For the Company:
B. Laidlaw

The material before me confirms that as an S&C Coordinator the grievor, Mr. Bradley Betker, possesses a high degree of technical knowledge and skill, and works largely without supervision and direction, deciding for himself which assignments, problems, or jobs are to be addressed. Based in Winnipeg, Mr. Betker is responsible for overseeing the Company's signal system over a significant territory, spanning from Longlac, Ontario to Biggar, Saskatchewan. It is not disputed that to a large degree the grievor is self-assigning, although he does report to S&C Supervisor Tab Hurrell in Winnipeg and takes further direction, as needed, from Supervisor Hank Campbell as relates to the territory from Winnipeg to Thunder Bay.

While as general matter it is not disputed that the grievor is entitled to make his own decisions as to the need to incur overtime, the record reflects that in late July the Company's senior management of S&C for Western Canada, Mr. Tim Orr, developed concern over an overtime report in relation to the grievor. That report showed a claim of 5.5 hours of overtime for Tuesday, July 9, 2013, 5 hours for Wednesday July 10, 2013 and 8.5 hours overtime claim for Saturday July 13, 2013. While the overtime for the 9th and 10th was charged to an identified project, there was no such project identification in respect of the 8.5 hours of overtime relating to Saturday July 13, 2013. The grievor's entry in relation to that date stated simply "drive home from T. Bay" referring to driving from Thunder Bay to Winnipeg. There is no dispute that the grievor performed work in the Dryden/Savant Lake Region on Tuesday July 9 and Wednesday July 10, 2013.

It is common ground that on July 9 and 10 the grievor worked at Savant Lake, accompanied by an assistant. It appears that he decided that following that work he would go to Thunder Bay to collect a trailer which had been left there and which, according to the grievor, needed to return to Manitoba for repairs, as its license plate was a Manitoba registration. Part of the Company's concern is that the grievor did not proceed directly from Savant Lake to Thunder Bay, but rather travelled to Dryden via a route which essentially augmented his overtime claim. It is not disputed that the following day, Thursday July 11, 2013 Mr. Betker drove from Dryden to Thunder Bay returning on the morning of Saturday July 13th, 2013, at which point he travelled home to Winnipeg. The grievor also charged for hotel accommodation in Thunder Bay for the nights of July 11 and 12, 2013.

The record confirms that while in Thunder Bay, on July 12, 2013 the grievor participated in a golf tournament sponsored by one of the Company's clients. The record also confirms that the grievor did perform some incidental jobs while he was in Thunder Bay, principally on the day of his arrival, July 11, 2013.

The record confirms that in fact the trailer the grievor had intended to collect was not in Thunder Bay, as it had apparently been removed by someone else to Fort Francis. In the result, after performing some incidental work at Thunder Bay, and participating in the golf tournament on July 12, the grievor drove from Thunder Bay back to Winnipeg on July 13, 2013 without securing the trailer. When asked why he did not go through Fort Francis to pick up the trailer Mr. Betker explained that that would have

required him to then travel onwards towards Winnipeg through a portion of the United States, something he could not do as he did not have his passport.

Following an investigation the grievor was terminated for the reasons reflected in the joint statement of issue. The position of the Company is that the grievor had no basis to travel to Dryden on July 10 and that no overtime should have been claimed in relation to that exercise. It further submits that the real reason for his travel to Thunder Bay was to participate in a golf tournament, and that it was not in any furtherance of productive work that needed to be done. In that regard the Company stresses that in fact the trailer that the grievor was supposedly going to fetch had been taken elsewhere, something which he apparently did not verify before proceeding to Thunder Bay. On that basis it submits that any overtime in relation to the grievor's travel to and from Thunder Bay and his hotel accommodation while there was, in effect, fraudulently claimed.

Having reviewed the evidence, I am compelled to agree that the grievor was less than candid with the Company, and thereby left himself open to discipline. I am satisfied that Mr. Betker knew, or reasonably should have known, that the trip to Thunder Bay was likely to result in a substantial overtime claim, including eight and half hours of overtime for the drive back to Winnipeg from Thunder Bay on Saturday July 13, 2013. The Arbitrator can understand the Company's concern that so substantial a claim for overtime would not have been discussed or cleared with any supervisor. While it does not appear disputed that the grievor, as a self-starting and unsupervised employee,

could essentially make his own decisions as to the occasional working of overtime in the form of an additional hour or few hours of work on a given day, what the instant case discloses is something of an entirely different scale, involving as it did an entire day of overtime taken up by travel from Thunder Bay to Winnipeg on what was effectively the grievor's day off.

The instant case raises a question as to whether the actions of Mr. Betker were in fact so deliberate and fraudulent as to merit his termination, or whether, as the Union maintains, his actions were at all times taken in good faith and for valid purposes so as to justify the imposition of no discipline against him.

Bearing in mind that in this case, as in any matter of discipline, the Company has the burden of proof, I am not satisfied that it has established that there was a course of deliberate fraud pursued by Mr. Betker. Firstly, I accept his explanation that on July 10 he drove from Savant Lake to Dryden for the specific purpose of dropping off the assistant who was working with him, whose vehicle was in fact left in Dryden. I am satisfied that there was no wrongdoing on the part of grievor in respect of any overtime claim relating to July 10, therefore.

I do have greater concern with the grievor's trip to Thunder Bay where, it is not disputed, he did participate in a golf tournament. While he did perform some incidental tasks while in Thunder Bay, and it appears he was unaware that the trailer he intended to fetch was no longer there. Mr. Betker's decision to assign himself to travel to Thunder

Bay, and to thereafter return from Thunder Bay to Winnipeg, charging a full day at overtime rates, is questionable, to say the least. I find it difficult to disregard the Company's allegation that the grievor in fact proceeded to Thunder Bay for the purpose of playing golf, rather than for any productive purpose and that better planning would have involved verifying ahead of time that the trailer which he intended to retrieve was in fact there. More fundamentally, while it may be that the grievor could self-assign certain amounts of overtime to himself, knowing as he did that he would be required to charge a full day of overtime for the return trip from Thunder Bay to Winnipeg, I find it questionable that he did not seek the authorization of a supervisor, or at a minimum advise his supervisor of his plan.

When all of the evidence is reviewed, however, I am not in agreement with the Company that what emerges is a deliberate and fraudulent intent on the part of the grievor to make false wage and expense claims. I think it is more accurate to say that the grievor engaged in a degree of sharp practice, abusing his independence and authority, to assign himself to Thunder Bay in a way that did coincide with a golf tournament. Better planning and perhaps a greater degree of candour on his part might well have revealed that the trailer he was intending to retrieve was no longer there and that in fact that he had no significant productive work that would justify his travelling to Thunder Bay. I am willing to conclude, however, that the grievor so ordered his affairs as to conveniently find himself in Thunder Bay for the golf tournament which he in fact decided to participate in. Through the exercise of sharp practice, or to put it differently, an abuse of his independence as a largely unsupervised employee, Mr. Betker followed

a course of conduct fashioned to serve his own interests rather than those of his employer.

Perhaps most importantly, however, I cannot agree with the Company that his entire course of activity involved a deliberate scheme to defraud the Company. There is no evidence to suggest that the grievor did not have a good faith belief that the trailer he intended to retrieve was still in Thunder Bay nor is there any suggestion that his intention to recover the trailer was somehow outside his normal responsibilities. In fact he had been reminded by his supervisor of the need to recover the trailer on more than one occasion. I am compelled to agree with the Company, however, that the grievor's method of planning his trip was highly irresponsible, and demonstrated errors of judgement which did merit a serious degree of discipline.

There are, however, mitigating factors to take into account. As noted above, the grievor has progressed to the highest level of technical ability within the S&C function, occupying as he does the position of S&C coordinator. Significantly, in all of his years of service since his original hire in 2000, Mr. Betker has never incurred any discipline whatsoever. In these circumstances I am not persuaded that the grievor's actions were so egregious as to make impossible his return to productive service.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without

compensation for any wages or benefits lost. I retain jurisdiction in the event of any dispute concerning the interpretation or implementation of this award.

Dated at Ottawa this 20th day of December, 2013.

"Michel G. Picher"
Michel G. Picher
Arbitrator