

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 716

Heard at Montreal, Tuesday, September 11, 1979

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (E)

DISPUTE:

Suspension of thirty (30) days assessed conductor L. Yates. Request by the Union for withdrawal of the disciplinary measure and full compensation for time lost.

JOINT STATEMENT OF ISSUE:

On December 21, 1978, Mr. L. Yates was charged of insubordination, conduct unbecoming an employee and also violation of the fourth paragraph of the "General Notice" of the Uniform Code of Operating Rules.

Following investigation that was held on December 27, 1978, the charges against Mr. L. Yates were sustained and consequently, he was suspended for a period of thirty (30) days.

The Union filed a grievance. The Railway rejected same.

FOR THE EMPLOYEE:

(SGD.) L. LAVOIE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R.L. BEAULIEU
SUPERINTENDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin	- Counsel, Montreal
N. West	- Trainmaster, Labrador City
R. Collier	- Train Clerk, Labrador City
J. Winsor	- Yardmaster, Labrador City
R. P. Morris	- Superintendent, Sept-Îles
J-P Morel	- Assistant Labour Relations, Sept-Îles

And on behalf of the Brotherhood:

D. McLean	- Local Chairman, Labrador City
R. J. Proulx	- General Chairman, Quebec City

AWARD OF THE ARBITRATOR

The facts of the matter appear quite clearly from the transcript of the investigation, and while there are certain points of conflict, there is in fact no really substantial difference as to what took place.

On the day in question the grievor was the Conductor on train Extra 256 West which left Ross Bay Junction at approximately 0900 hrs. and arrived at Carol Lake Yard at approximately 1130. Prior to the arrival of the train at Carol Lake Yard, the Yardmaster, Mr. Winsor, was in communication with the Engineman, and gave him instructions as to the work to be done on arrival. There is some question as to whether or not Mr. Winsor also spoke to the grievor at that time, but whether he did or not, the grievor

knew what the instructions were, and that he was to switch out Bunker "C", and, if possible, three cars for the Service Building, and go to the North End. The grievor made no suggestion that he should get a dust mask before going to the North End (where, it seems, there are dusty conditions). Had such a suggestion been made, he could have arranged to come in to get one, or the Yardmaster might have made some other arrangement. The Yardmaster did not, however, expect to see the grievor at his office.

In fact, however, the grievor did bring the train up not far from the office. The Yardmaster went out to speak to him and asked him why he had done what he had been told not to do. The grievor had not been told expressly not to come to the office, but his instructions were clear enough, and the grievor should have understood that the Yardmaster would require an explanation. The grievor did not offer one, but ignored the Yardmaster, and walked by him into the crew reporting room, where the Yardmaster followed. The Yardmaster again asked the grievor why he was there and the grievor replied "Leave me alone, I can't be bothered with you, you are no fucking good". The grievor then pushed the Yardmaster away. The space in the room may have been confined, but the evidence suggests clearly enough that it was not a case of inadvertent jostling, but of an intentional shove. The grievor walked back to his train, and the Yardmaster accompanied him, to get the waybills. The grievor told the Yardmaster "You are no good, never were any good and you are not worth me losing my job". The Yardmaster, according to his statement, replied, "If I had the authority, you wouldn't have a job now". The grievor's account of that is that the Yardmaster's expression was "...you wouldn't have a fucking job now" although the Yardmaster denies the use of that expression.

At the investigation, While the grievor did not admit all of the foregoing, he did acknowledge in a general way the use of abusive language, saying "if you termed the words that are used in this statement as abusive – yes". It is clear that the language used by the grievor was abusive and that it was directed at the Yardmaster. The use of an obscene term would not in itself (in the context of this sort of work), be a ground of discipline. When abusive language (with or without obscenity, although the case is clearer perhaps where obscenity is involved) is directed at another person, however, then there is a disciplinable offence. That was the case here. The grievor did direct, as I find, offensive and insubordinate language at the Yardmaster, and he did improperly push him. While the Yardmaster may have expressed some annoyance at seeing the grievor come to the office, that was understandable in the circumstances. The grievor ought to have indicated what moves he would be making, or sought permission when the earlier instructions were given. The incident was not provoked by the Yardmaster, but was blameworthy conduct on the part of the grievor. It was an example of clearly offensive and insubordinate behaviour.

As to the Yardmaster's comments to the grievor, even accepting the grievor's version, the Yardmaster may have used an obscene term, but he was not directing abusive language at the grievor. Finally, there was a witness to the incident, being a janitor who was in the crew reporting room at the time. At the investigation the janitor was equivocal and would neither affirm or deny what had taken place. He had, however, remarked on what had occurred within a few minutes of the incident, and there is clear and reliable evidence as to what he had then said, which was that the grievor had told the Yardmaster to fuck off, and had pushed him.

From all of the material before me, then, there is really no serious doubt but that the incident occurred as alleged. It was a case of serious misconduct without provocation, and one for which discipline was properly imposed.

For the foregoing reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR