

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1881

Heard at Montreal, Tuesday, 14 February 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Grievance of Trainman/Yardman Crone account his removal from the Engine Service Training Program.

JOINT STATEMENT OF ISSUE:

Trainman/Yardman Crone was removed from the Engine Service Training Program effective 15 October 1987 for unacceptable conduct wherein he permitted an unauthorized person entry to a CN dormitory at Gimli, Manitoba.

The Union appealed the removal of Mr. Crone from the Engine Service Training Program stating the Company acted in an unfair manner and contrary to the Discipline Procedure of the Collective Agreement. The Union has requested that the Company allow Mr. Crone to complete the training without impediment to the seniority standing

The Company has declined the Union's request.

FOR THE UNION:

(SGD.) W. G. SCARROW
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) M. DELGRECO
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. B. Bart – Manager, Labour Relations, Montreal
D. E. Lussier – Co-Ordinator, Transportation Montreal
W. G. Sears – Supervisor, Technical Training, Gimli

And on behalf of the Union:

L. Karn – Vice-General Chairman, Windsor
M. P. Gregotski – Vice-General Chairman, St. Catharines
R. Roach – Local Chairman, Toronto
J. C. Crone – Grievor

AWARD OF THE ARBITRATOR

It is not disputed that the grievor violated the posted rule by entertaining a female guest in his dormitory room while he was enrolled in the Company's Engine Service Training Program at Gimli, Manitoba. While the grievor expresses the belief that the rule prohibited only an overnight visit, the written rule, a copy of which was provided to him at the beginning of the course, is clearly more general. I am satisfied that Mr. Crone knew, or reasonably should have known, that it was contrary to the rules to have an unauthorized person as a guest in his room.

The access of conductors and yard foremen to the Engine Service Employees' (E.S.E.) course is governed by the terms of Article 66.2 of the Collective Agreement which provides as follows:

66.2 Subject to the provisions of paragraph 66.4, senior qualified conductors and yard foremen will be given full and unprejudiced consideration in the selection by the Company of candidates to accept training under the terms of this Article.

Under the terms of the foregoing provision attendance at the course is not a matter of right, although senior qualified applicants are entitled to full and fair consideration for admission. It is common ground that upon admission the trainees are provided written information material which specifically advises them that they may be disqualified from the course for reasons of conduct, attitude or violations of UCOR Rule G.

The material establishes that upon discovery of the grievor's infraction of the rule with respect to entertaining unauthorized persons in a dormitory, he was immediately removed from the course. He had then completed all but one or two days of the course, with an examination standing of 96%. It also appears that subsequent to his removal from the course at Gimli Yardman Crone was advised by Company Officer Dafoe that he would not be given the opportunity to write his final exam and would never be allowed to reapply for admission to the E.S.E. training program.

In the circumstances of this case the Arbitrator is satisfied that the grievor's removal from the program for an admitted violation of the rules was in the nature of an administrative measure which cannot, on its face, be characterized as a disciplinary demotion (**see CROA 1659**). To that observation, however, one important qualification must be added. If, as the Union alleges, the grievor were forever prevented from being readmitted to the E.S.E. course, the Arbitrator would have substantial difficulty understanding how that result, which would clearly impact upon his opportunities for promotion and his general career path within the Company, should not be characterized as a disciplinary outcome.

At the hearing the Company's representative undertook a position clearly contrary to that apparently pronounced by Mr. Dafoe. As part of its submission the Company related the circumstances of a number of employees who have been removed from the course at Gimli for various forms of improper conduct. It specifically points to the case of employee M. S. Dziamik, who was removed from the training course on February 4, 1985 "for rowdiness and unauthorized visitor in dormitory". The Company then points to the fact that Mr. Dziamik reapplied for training and was admitted to the course, successfully completing it on December 9, 1988. On the strength of these facts, and the Company's own representations at the hearing, the position taken by Company Officer Dafoe is clearly incorrect. Yardman Crone is plainly entitled to reapply for admission to the course at Gimli. Given his positive prior record of discipline, the obvious quality of his performance in the course prior to the dormitory incident, and the readmission of Mr. Dziamik, whose conduct on the face of it would appear to have been more serious than the grievor's, a refusal on the part of a Company officer to allow the grievor to enrol in the course upon a future request to do so would raise the most serious questions respecting the discriminatory treatment of the grievor and the violation of his right to unprejudiced consideration for admission to the course within the terms of Article 66.2 of the Collective Agreement.

Subject to the foregoing clarification, for the reasons related above, the instant grievance is dismissed.

February 17, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR