

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2077

Heard at Montreal, Thursday, 15 November 1990

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Discipline assessed the record of Engineer J.W. Merrifield for conduct unbecoming and unacceptable of an employee; directing an obscene remark of a sexual and humiliating nature to a fellow employee, December 17, 1988.

JOINT STATEMENT OF ISSUE:

On December 22, 1988, an investigation was held into a verbal discussion between Engineer Merrifield and a fellow employee. Subsequent to that investigation Engineer Merrifield's record was assessed 30 demerits for uttering a sexual, humiliating and obscene remark.

The Brotherhood contends that, based on the investigation record, Engineer Merrifield did not make the remark for which he was disciplined. The Brotherhood further contends that the Company, based on the investigation record, did not have just cause to impose discipline on Engineer Merrifield.

The Company declined the Brotherhood's grievance.

FOR THE BROTHERHOOD:

(SGD) T. G. HUCKER
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) J. M. WHITE
GENERAL MANAGER OPERATIONS & MAINTENANCE, HHS

There appeared on behalf of the Company:

D. A. Lypka	– Unit Manager, Labour Relations, HHS, Vancouver
D. M. Hayden	– Deputy Superintendent, Winnipeg
B. P. Scott	– Labour Relations Officer, Montreal
F. O. Peters	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

T. G. Hucker	– General Chairman, Calgary
J. Flegel	– Vice-General Chairman, Saskatoon
B. Marcolini	– President, UTU–Canada, Ottawa
G. Hallé	– General Chairman, CN Lines East, Quebec

AWARD OF THE ARBITRATOR

The issue in the instant case is whether the offensive remark of a sexual nature, alleged to have been addressed by Locomotive Engineer Merrifield to Ms. Sharon Zinn, was in fact uttered. While the Brotherhood seeks to characterize the dispute as one turning entirely on credibility as between the grievor and Ms. Zinn, the Arbitrator cannot accept that submission. While it is true that the conversation between the two employees took place in private, the evidence discloses beyond controversy that shortly after the exchange between Mr. Merrifield and Ms. Zinn the latter spoke with fellow employee Sharon French as well as Train Conductor B.D. Domino. Their consistent evidence is that she was extremely shaken-up, and was in tears because of the manner in which she had been addressed by Mr. Merrifield. In the Arbitrator's view when that direct evidence is taken into account, along with an examination of the statements of both Ms. Zinn and Mr. Merrifield, I am compelled to conclude that the allegation against the grievor is established, on the balance of probabilities.

The seriousness of sexual harassment or of personal insults of a sexual nature has been considered at some length in prior awards of this Office, and need not be repeated here (*see CROA 1791, 1658*). The evidence in the instant case discloses that the grievor addressed a grossly disturbing remark to Ms. Zinn without any provocation or justification. Its impact, as the evidence discloses, was tantamount to the effect of a physical assault. In the circumstances I am satisfied that the assessment of thirty demerits was within the appropriate range of disciplinary response, and that the Company's decision should not be disturbed by the Arbitrator. For the foregoing reasons the grievance is dismissed.

November 16, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR