

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2086

Heard at Montreal, Wednesday, 12 December 1990

concerning

CANADIAN PACIFIC EXPRESS & TRANSPORT

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Mr. Yves Royer was assessed a total of fifty-five (55) demerit marks by letter dated June 26, 1990, which led to his dismissal because of an accumulation of one hundred and ten (110) demerits.

JOINT STATEMENT OF ISSUE:

On June 26, 1990, Mr. Yves Royer was assessed the following demerit marks: **1)** Thirty (30) demerit marks for insubordination and assault of a supervisor on June 21, 1990; **2)** Twenty-five (25) demerit marks for the prolongation of his coffee break on June 21, 1990; **3)** Dismissed for accumulation of demerits.

The Union's contention is that the penalty assessed Mr. Royer is not justified and subsidiary is much too severe and requested that Mr. Royer be reinstated and his demerit marks be reduced and he be compensated for wages lost.

The Company has declined the Union's request.

FOR THE UNION:

(SGD) J. J. BOYCE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) B. F. WEINERT
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

R. Skelly – Counsel, Montreal
B. F. Weinert – Manager, Labour Relations, Toronto
M. Mousseau – Terminal Manager, Montreal

And on behalf of the Union:

K. Cahill – Counsel, Montreal
J. J. Boyce – General Chairman, Toronto
M. Gauthier – Vice-General Chairman, Montreal
G. Lemire – Local Chairman, Montreal
Y. Royer – Grievor

AWARD OF THE ARBITRATOR

In the Arbitrator's view, the evidence establishes that the Company had just cause to assess a serious level of discipline. It is not disputed that Mr. Royer took an extended coffee break the morning of June 21, 1990 and did this in spite of numerous warnings and discipline in the past for the same conduct. The evidence also establishes that he demonstrated, by his words and actions, a lacking in respect for Supervisor André Veillette when the latter sought to make him understand that he was acting in violation of the rules.

However, in light of the evidence, the Arbitrator is not convinced that the grievor is guilty of pushing or shoving Mr. Veillette with the degree of aggression with which he is charged. It appears that the supervisor, himself provoked by the fact that Mr. Royer had turned his back on him while he was trying to speak to him, approached the grievor in an excited, if not aggressive manner. In the circumstances, I judge that the physical gesture of the grievor, who pushed Mr. Veillette away with a movement of his arms, was defensive rather than offensive, in spite of the contrary impression of the supervisor.

There are, moreover, mitigating factors to be taken into account. Firstly, the Arbitrator accepts the suggestion of Counsel for the Union to the effect that this is a matter of a single ongoing incident, and that Mr. Royer's reaction can be explained in part by virtue of the excited reaction of his supervisor. Also, Mr. Royer is an employee with eleven years' service who has only been twice disciplined prior to this occasion.

On the other hand, the Arbitrator must accept that Mr. Royer already had fifty demerit marks on his discipline file. He was well aware that his abuse of the coffee breaks would bring with it a serious measure of discipline. On the whole, I deem it appropriate to reduce the discipline and substitute for the discharge a lengthy period of suspension.

For these reasons the grievance is allowed, in part. Mr. Royer shall be reinstated into his employment, without compensation for loss of wages and benefits, and without loss of seniority. Furthermore, his discipline file will stand at fifty demerit marks.

December 14, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR