

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2153

Heard at Montreal, Tuesday, 11 June 1991

concerning

ONTARIO NORTHLAND RAILWAY

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The assessment of 20 demerit marks against the record of Clerk, Ms. M. Carriere.

JOINT STATEMENT OF ISSUE:

On November 28, 1989, Clerk M. Carriere was summoned to an investigation to determine her responsibility in connection with insubordinate conduct toward her supervisor on November 23, 1989. Subsequent to the investigation, Ms. Carriere was assessed 20 demerit marks for loud and abusive behaviour toward her supervisor. The Union contends that the Company had not established insubordination and that the discipline is not justified. The Union requested that Ms. Carriere's file be cleared of the 20 demerit marks.

The Company does not agree with the Union's finding and refuses to remove the discipline.

FOR THE UNION:

(SGD.) E. FOLEY
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) P. A. DYMENT
PRESIDENT

There appeared on behalf of the Company:

M. J. Restoule – Manager, Labour Relations, North Bay
R. G. Leach – Chief Mechanical Officer, North Bay
B. Lindblom – Witness

And on behalf of the Union:

H. Caley – Counsel, Toronto
D. Gillespie – Vice-General Chairman, North Bay
D. Graham – Local Chairman, North Bay
B. Burns – Observer
M. Carriere – Grievor

AWARD OF THE ARBITRATOR

The evidence before the Arbitrator establishes that on November 23, 1989 the grievor, Ms. Monique Carriere, became upset because of the condition of the washroom which had been designated as hers. It appears that as the only female employee on the Company's premises at Cochrane it was understood that she was to have exclusive use of a washroom adjacent to the office, and that male employees would use a downstairs facility. According to her evidence, on the day in question she found the toilet seat to be covered in urine, and surmised, as on previous occasions, that her supervisor, Mr. J.P. Turgeon was responsible. She was also concerned that the window in the washroom did not close properly, which caused the room to become extremely cold, and that a leak in the ceiling had not been repaired. On the basis of the grievor's evidence the Arbitrator is satisfied that these facts prompted Ms. Carriere to enter Mr. Turgeon's office in a state of anger, and to express to him in forceful terms her wish that something be done immediately about the conditions described above.

Unfortunately, it appears that Mr. Turgeon was then in a meeting with Carman E. Dumoulin, and that the grievor's intrusion, tone of voice and insistence caused some embarrassment in the circumstances. In the Arbitrator's view what the evidence discloses is not so much a case of insubordination, as the events are characterized by the Company, as an error of judgement by Ms. Carriere with respect to the timing of her protest to Mr. Turgeon, and to some degree with respect to the tone of anger which she adopted in front of another person who works under Mr. Turgeon. The grievor must appreciate that legitimate grievances, in the normal course, should be communicated to a supervisor with an acceptable degree of discretion and civility, and in a manner which does not cause the supervisor undue embarrassment in the eyes of others.

In the instant case, however, there are mitigating factors to be taken into account. As noted above, the condition of the grievor's washroom facility, and her surmise that Mr. Turgeon, who had previously been responsible for the state of the toilet seat, was again to blame, was in the nature of an incident that would naturally provoke a strong reaction. That is especially so, given that the washroom was meant to be designated exclusively as a female facility for her use. In the circumstances I am satisfied that the assessment of twenty demerit marks to the grievor, an employee whose previous record was unblemished, is substantially in excess of what was appropriate in the circumstances. At most, in the Arbitrator's view, the grievor should have been subject to a written warning advising her that her conduct was unacceptable. It should be added that in assessing the issue of mitigation the Arbitrator has also taken into account other factors separately related in **CROA 2154**.

For the foregoing reasons the assessment of twenty demerits registered on the grievor's record shall be removed forthwith, and a letter of reprimand shall be substituted.

June 14, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR