

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2307

Heard at Montreal, Wednesday, 9 December 1992

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

A matter involving the termination of Vancouver employee, D. Morell on or about, December 16th, 1991 for the alleged "defacing and damaging of customer packaging", and "threatening of Driver Supervisor Dan Dobson and his family."

UNION'S STATEMENT OF ISSUE:

The Union, during the grievance process, raised the cogent argument in review of the case file material that its position should logically succeed given that Company officials failed to provide clear, as well as, convincing evidence against this employee.

The Union contends that the interview process contemplated under the terms of the present collective agreement requires that interviews conducted under article 6.2 of the agreement provides that "... such interview must be held within 14 calendar days ...", further, that "... the employee to be interviewed shall be notified in writing no less that 24 hours prior to the scheduled interview time."

The Union maintains that the Company violated the principles of article 6.2, given this, that the terms of article 6.3 now flow, "failure to comply with article 6.2 shall render any conclusion null and void, and any statements at such interview inadmissible at any subsequent proceedings."

The Union further maintains that the evidence adduces that the Company had no grounds to proceed against this employee for these "alleged incidents", on the contrary, the Union provided the Company with written voluntary statements from fellow employees, as well as, a Company supervisor which clearly refutes these allegations made against the grievor.

However, to date, the Company has declined the Union's request that the grievor be returned to work without loss of seniority, or benefits and that he be compensated for all wages lost since his dismissal.

FOR THE UNION:

(SGD.) M. F. FLYNN

FOR: EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

- M. D. Failes – Counsel, Toronto
- P. D. MacLeod –Director of Terminal, Toronto
- D. Dobson –Witness
- R. Wettstein –Witness

And on behalf of the Union:

- F. Luce –Counsel, Toronto
- J. Crabb –Executive Vice-President, Toronto
- D. Elickson –Counsel, Toronto
- D. Morell –Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms, without dispute, that the grievor willfully defaced and damaged a customer's package. His actions involved the defacing of a box containing a Fisher Price child's sandbox destined for delivery to a customer's home. The illustration on the box depicted a young boy and girl playing in a sandbox. Next to one of the children's mouth the grievor inscribed the words "My daddy touches me, we're on welfare."

It is difficult to characterize the seriousness of Mr. Morell's action. The willful defacing of a customer's property with what can only be described as an obscenity, in the knowledge that the goods are in all likelihood destined to a family, is an action plainly in reckless disregard of the potential offence to others and the likely harm to the Company's reputation as carrier and custodian of its customers' property.

Standing alone, against an otherwise positive background of employment service, such an incident might be mitigated if it could be shown to be an isolated and uncharacteristic event. Unfortunately that is not the case in the grievance at hand. The evidence before the Arbitrator discloses that between November of 1989 and October of 1990 the grievor was disciplined more than twelve times. His misconduct involved a variety of infractions, including disruptive behaviour, threatening a fellow employee, kicking freight and tearing out a telephone line from its jack. While his accumulated demerits had been removed from his record by the passage of time prior to the incident giving rise to this grievance, the nature of the offences disclosed calls into serious question the degree of rehabilitation achieved by Mr. Morell, particularly in light of the seriousness of the action for which he was disciplined.

The Arbitrator was further presented with material alleging that Mr. Morell had threatened Supervisor Dan Dobson during the course of a telephone call on or about December 2, 1991. The grievor denies the allegation. In the Arbitrator's view it is unnecessary to resolve the factual dispute with respect to that separate head of discipline. I am satisfied, for the reasons touched upon above, that the knowing defacement of a customer's property, by the inscribing of an obscenity on a package destined in all likelihood to a family setting, was deserving of serious discipline, and in view of the grievor's prior record, was sufficient to bring the Company's action within the appropriate range of discipline.

The Arbitrator cannot sustain the Union's submission that there was a violation of the grievor's rights under article 6.2 of the collective agreement. The evidence discloses that on December 3, 1991, he was given written notice to attend a disciplinary interview on December 9, 1991 in connection with defacing a customer's packaging. The Union's objection is therefore without merit.

For the foregoing reasons the grievance must be dismissed.

December 11, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR