

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2324

Heard at Montreal, Wednesday, 10 February 1993

concerning

**ONTARIO NORTHLAND RAILWAY**

and

**TRANSPORTATION COMMUNICATIONS UNION**

### **DISPUTE:**

The assessment of 25 demerit marks against the record of General Audit Clerk, J. Rosseter for alleged insubordination.

### **JOINT STATEMENT OF ISSUE:**

On October 20, 1992, Mr. J. Rosseter was alleged to have refused a request by his supervisor for his attendance at a meeting to discuss a job performance issue. Following an investigation into the matter, Mr. Rosseter was assessed 25 demerit marks for behaving in an insubordinate manner toward supervisor on October 20, 1992.

The Union contended that there was no case to support the charge for insubordination and requested the removal of the 25 demerit marks and the clearing of Mr. Rosseter's record.

The Company denied the appeal.

### **FOR THE UNION:**

**(SGD.) E. FOLEY**  
ASSISTANT DIVISION VICE-PRESIDENT

### **FOR THE COMPANY:**

**(SGD.) P. A. DYMENT**  
PRESIDENT

There appeared on behalf of the Company:

M. J. Restoule – Manager, Labour Relations, North Bay  
L. A. Fortier – Supervisor, Freight Revenues, North Bay

And on behalf of the Union:

H. Caley – Counsel, Toronto  
E. Foley – Vice-President, North Bay  
J. Rosseter – Grievor

### **AWARD OF THE ARBITRATOR**

On the basis of the evidence presented the Arbitrator is satisfied that Mr. Rosseter did unreasonably refuse to attend a meeting with his supervisor. He knew, or reasonably should have known, that she wished to discuss his work performance, and was not conducting a formal disciplinary investigation in respect of which he was entitled to union representation. On that basis, the Company was entitled to assess discipline against him.

The evidence further reveals certain mitigating factors, however. It does not appear disputed that Mr. Rosseter's supervisor, Ms. L. Fortier, addressed Mr. Rosseter in a tone which lacked the civility normally expected in an exchange between an employer and an employee. Unfortunately, at one point, she called Mr. Rosseter "a loser". These observations do not excuse the grievor's conduct in refusing to meet with his supervisor, nor do they fail to appreciate the understandable degree of frustration which Ms. Fortier may have been experiencing. They do, however, indicate the reality of the situation. It appears that two reasonable individuals became unfortunately embroiled in a petty stand off that was not worthy of either of them.

In the circumstances, having regard to the prior good service of Mr. Rosseter, as well as the dubious level of communication which took place, the Arbitrator is satisfied that the assessment of 25 demerits is excessive in the circumstances. The Arbitrator therefore directs that the penalty assessed be reduced to ten demerits for insubordination.

February 12, 1993

**(Sgd.) MICHEL G. PICHER**  
**ARBITRATOR**