

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2347

Heard at Montreal, Thursday 11 March 1993

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of restriction assessed Yardmaster P. Gilmore, January 17, 1992

JOINT STATEMENT OF ISSUE:

Yardmaster P. Gilmore was assessed a "restriction from working as yardmaster and case re-evaluation after one year, for insubordination while you were working as yardmaster in Turcot Yard on December 16, 1991."

The Union has appealed the discipline on the grounds that: the grievor was experiencing serious communication problems with the car department, the grievor was penalized because he was desirous to correct an unsafe condition.

The Union requests that the grievor be reimbursed for the difference in wages between a yardmaster and a yard foreman for each day that he is serving a restriction from his rightful position, and that he be reinstated as a yardmaster.

The Company had declined the appeal.

FOR THE UNION:

(SGD.) W. G. SCARROW
GENERAL CHAIRMAN

There appeared on behalf of the Company:

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| D. Gagné | – Labour Relations Officer, Montreal |
| J. E. Pasteris | – Manager, Labour Relations, Montreal |
| A. Lacombe | – General Yardmaster, Montreal |
| N. Bishop | – Trainmaster, Montreal |

And on behalf of the Union:

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| W. G. Scarrow | – General Chairman, Sarnia |
| F. Garant | – Vice-General Chairman, Montreal |
| M. P. Gregotski | – General Chairman, Fort Erie |
| R. Michaud | – Quebec Provincial Legislative Board Chairman, Montreal |
| P. Gilmore | – Grievor |

FOR THE COMPANY:

(SGD.) J. E. PASTERIS
FOR: VICE-PRESIDENT, ST. LAWRENCE REGION

AWARD OF THE ARBITRATOR

Having regard to the totality of the material filed the Arbitrator must conclude that the grievor's refusal to speak directly to carmen, and to limit his instructions to the carmen's foreman, was in direct contradiction of a clear direction given to him by Trainmaster Bishop. In the circumstances I cannot disagree that the Company had reason to remove him from service as a yardmaster. The issue of substance in these proceedings is whether that sanction should remain indefinitely in place, or whether it should, in the discretion of the Arbitrator, be reduced in light of the totality of the evidence and material presented.

The evidence reveals that Mr. Gilmore's refusal to follow the direction of the trainmaster was prompted, in part, by his concern that proper radio procedures were not being followed by the carmen in the yard. I am also satisfied, however, that his position was also prompted by a degree of ill feeling between certain car department staff and himself. The evidence before me discloses that, by the direction of the Canada Labour Board pursuant to a complaint made by Yardmaster Gilmore and the Union, an order has issued with respect to a correction of the radio communication practices in Turcot Yard. During the course of the hearing, upon being questioned by the Arbitrator, Trainmaster Bishop confirmed that in his view, if the new communication procedures are observed and the grievor is prepared to undertake to follow his direction to speak with carmen, and not only with their supervisor, Mr. Gilmore could return to productive work as a yardmaster.

The penalty suffered by Mr. Gilmore has in fact been very onerous. Because of physical limitations, he has not been able to perform the work of a yard foreman or a yard helper. In the result, he has effectively been deprived of employment with the Company for some thirteen months, notwithstanding that the initial restriction placed upon him was to be reviewable after one year. In all of the circumstances, the Arbitrator is satisfied that the assessment of discipline against the grievor should be reduced by a direction ordering his reinstatement, on conditions. As I am not satisfied that the grievor was entitled to refuse the direction given to him by Trainmaster Bishop, I do not deem this to be a case for compensation.

The Arbitrator therefore directs that the grievor be reinstated into his employment as a yardmaster, subject to his willingness to comply with the directive of Trainmaster Bishop, or any other Company officer, that he is to communicate directly with carmen, as instructed. In future, Mr. Gilmore must appreciate the importance of maintaining appropriate standards of civility and sensitivity in his communications with all persons with whom he is compelled to work.

March 12, 1993

(Sgd.) MICHEL G. PICHER
ARBITRATOR