

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2607

Heard in Montreal, Wednesday, 12 April 1995

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL
WORKERS UNION OF CANADA (CAW-CANADA)**

DISPUTE:

Appeal the assessment of 30 demerits to the record of Senior Transportation Clerk G.J. Rothon.

JOINT STATEMENT OF ISSUE:

An employee statement was taken from G. Rothon following an incident on 27 November 1992, between G. Rothon and his Supervisor, G.D. Adams. The matter under investigation related to G. Rothon's alleged conduct and failure to follow direction from a Company officer, which resulted in him being sent home prior to the completion of his shift on 27 November 1992.

Following the completion and review of the Company's investigation, G. Rothon was assessed 30 demerits for refusing to complete assigned work as directed by a Supervisor and for insubordinate conduct and failure to immediately follow instructions of a supervisor to leave Company property.

The Union maintains that the Company has not established G. Rothon's responsibility and requests that the discipline be expunged from his record.

The Company disagrees and has declined the Union's request.

FOR THE UNION:

(SGD.) A. S. WEPRUK
NATIONAL COORDINATOR

FOR THE COMPANY:

(SGD.) A. E. HEFT
FOR: SENIOR VICE-PRESIDENT - EAST

There appeared on behalf of the Company:

- | | |
|------------------|--|
| R. Bateman | - Human Resources Officer, Toronto |
| Dr. T. VanSchoor | - Medical Director Eastern Canada, Toronto |
| M. L. Brown | - Regional Operations Officer, Toronto |
| T. Novak | - Administration Officer, C.S.C., Toronto |

And on behalf of the Union:

- | | |
|---------------|----------------------------|
| R. Fitzgerald | - Local Chairman, Montreal |
| G. J. Rothon | - Grievor, Montreal |

AWARD OF THE ARBITRATOR

The incident giving rise to the discipline which is the subject of this grievance commenced at approximately 13:50 on November 27, 1992. The grievor, Mr. G. Rothern, was then on the point of going for his lunch break during the mid-point of an overtime day shift which he was working, having worked through the previous night. Supervisor G.D. Adams noticed that Mr. Rothern, an employee with responsibilities as a union grievance officer, was not at his work station, and was standing, with his coat on, at the work station of employee Wayne MacFarlane in the Quality Service section. Mr. Adams instructed Supervisor R. Jaeger to go and see whether Mr. Rothern was engaged in social conversation, or was dealing with Mr. MacFarlane on business. It is not disputed that Mr. Rothern had been the subject of frequent inquiries of that kind for some time, at the direction of Mr. Adams, as part of a "crack down" on employees not being at their work place and, in Mr. Rothern's case, sometimes conducting union business without prior authorization from management to be away from their work station.

The evidence establishes that in fact Mr. Rothern was briefing Mr. MacFarlane on the urgent problem of a customer who required a special move of a rail car, in the absence of which it would be unable to perform scheduled week-end work. As Mr. Jaeger approached the two employees the grievor stated to Mr. MacFarlane that Mr. Jaeger was coming to see whether they were having a social chat or were doing business, explaining that Mr. Adams had undertaken a campaign in this regard. Mr. Rothern then asked Mr. Jaeger whether in fact Mr. Adams had sent him to check on whether he was working, whereupon Mr. Jaeger confirmed that Supervisor Adams had sent him. The grievor then explained to Mr. Jaeger that he was dealing with an urgent customer problem, and that he would go and see Mr. Adams himself.

Mr. Rothern then proceeded, in an obviously angry state, to Mr. Adams' office. He placed a piece of paper in relation to the customer's work on Mr. Adams' desk and told the supervisor that if he wanted the work done he could do it himself or get someone else to do it. Mr. Rothern then turned and left Mr. Adams' office, causing the supervisor to rise and follow him into the general office area, calling after him. Eventually Mr. Rothern turned and stopped, at which point Mr. Adams asked him to step into another supervisor's office, which was empty.

There is little doubt that a heated verbal exchange then transpired between the two men inside the office. Their respective accounts as to what occurred and what was said differ substantially. Mr. Adams states that, using four letter words, Mr. Rothern asked him what was going on, stating that he was only trying to do his job in protecting a customer's car "... and you send some bozo over to send [me] back to [my] desk". Mr. Adams states that he instructed the grievor that the piece of paper which he had left on the supervisor's desk was his to complete and that he should return and finish what he was doing. He states that he attempted to explain to Mr. Rothern the policy of challenging staff who are absent from their work stations to ensure that work was being performed, which caused the grievor to loudly protest, asking about an employee who was allowed to move freely about the work place selling lottery tickets.

According to Mr. Adams, the grievor refused to carry out repeated requests on his part to return to complete the work which he was doing. The supervisor then determined that the grievor was being insubordinate and should be removed from the work place, and instructed Mr. Rothern to go home. According to his account the grievor refused to leave, and insisted on having something in writing from Mr. Adams. The supervisor refused to provide a written document and advised Mr. Rothern that he was going to summon the CN police to have him removed.

Shortly thereafter, having called the police, Mr. Adams returned to Mr. Rothern and again requested him to leave. At that point the grievor insisted that he be allowed to speak to a Union representative. Mr. Adams told him that he had no such right, and that if he did not vacate the premises the CN police would remove him. It appears that Mr. Rothern next had a brief encounter with Union grievance officer M. Fleet, and returned to the front office where he again met Mr. Adams in the company of Administration Officer T. Novak. Mr. Adams then advised him that the CN police were on their way to escort him from the property and, it appears, the grievor then left of his own accord.

The account of the encounter between Mr. Adams and Mr. Rothern given by the grievor, and corroborated by the evidence of other employees, is substantially different. According to Mr. Rothern, while he and Mr. Adams were in the other supervisor's office alone, Mr. Adams used a heated tone of voice and four letter words with him. He relates that among other things, Mr. Adams strongly objected to the grievor having written a letter to the Company's President, objecting to having been sent home by Mr. Adams on the occasion of a tour of the work place by the President, stating in a raised voice "I don't want you going above my head, you little fucker." Mr. Rothern relates that in light of the tone being taken by his supervisor he attempted to leave the office, at which point Mr. Adams physically pushed him back by applying his hands to his chest. The words used by Mr. Adams are corroborated by

another employee who was in the vicinity. Two other employees also gave statements in relation to what transpired. One of them relates that he observed Mr. Adams blocking the grievor's attempt to exit the office by standing in front of him while the second states that he saw Mr. Adams right hand push Mr. Rothon back, causing him to stumble and utter the words "Whoa there!". In sum, the evidence of the grievor, corroborated by three other employee witnesses, would suggest that Supervisor Adams was extremely agitated and used a provocative tone and aggressive gestures in relation to the grievor.

On a review of the evidence the Arbitrator is satisfied that there was a refusal to perform work by Mr. Rothon at the direction of Mr. Adams. Unfortunately, what should have been a straight-forward incident of an employee's refusal to carry out directions escalated into a heated exchange and questionable conduct on the part of both the grievor and Supervisor Adams. I am satisfied, on the balance of probabilities, that Mr. Adams used provocative and insulting language with Mr. Rothon, and that he did place his hands upon him. At a minimum, such conduct was not calculated to cause Mr. Rothon to reconsider his course of action or become more cooperative towards Mr. Adams.

That said, the evidence suggests that the grievor had been something of a thorn in Mr. Adams' side in the past, and that, as reflected in the combative and uncooperative attitude demonstrated by Mr. Rothon during the course of the Company's investigation, he can be a difficult person to deal with. There seems to be little dispute that business between Mr. Adams and Mr. Rothon in his capacity as a Union grievance officer had created a strained relationship between them. The incident giving rise to this grievance obviously did little to help that situation, as the grievor proceeded to initiate an assault charge against the supervisor, who responded with a similar charge. Demonstrating better judgment than either of the antagonists, the criminal court judge threw both charges out for want of clear evidence, apparently remarking that the real problem was one of labour relations.

In the Arbitrator's view the grievor made himself liable to discipline for refusing to carry out the direction given to him by his supervisor. It is difficult, however, to discount as a mitigating factor the fact that the grievor was provoked by the paternalistic method of supervision forced upon him by Mr. Adams. He was in the process of dealing with an urgent customer problem when Mr. Jaeger was sent to check on him, apparently in a manner which had become an irritating pattern. Further, as noted above, the angry and provocative tone adopted by Mr. Adams during the conversation between the two employees in the other supervisor's office did little to mollify the situation.

In the circumstances the Arbitrator is satisfied that while some measure of discipline was deserved, the assessment of thirty demerits is excessive in the circumstances. In my view ten demerits would have sufficed to communicate to Mr. Rothon the importance of carrying out the directive issued to him by his supervisor, notwithstanding the feelings of animosity between them. The Arbitrator therefore directs that the grievor's record be amended accordingly. Having observed the grievor's style, I would also suggest that Mr. Rothon reconsider the wisdom of continuing to place himself in potentially confrontational situations as a Union grievance officer.

April 20, 1995

(signed) MICHEL G. PICHER
ARBITRATOR