

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2732

Heard in Calgary, Tuesday, 14 May 1996

concerning

CANADIAN PACIFIC LIMITED

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The issuance of 20 demerit marks to Winnipeg CSC employee Ms. K. Fitzpatrick for “conduct unbecoming an employee – unauthorized and inappropriate use of merlin.”

JOINT STATEMENT OF ISSUE:

On February 14, 1995, Ms. H. MacDonald contacted Mr. R.A. Tisdall, Executive Director, CSC, to discuss a document which had been sent to her anonymously. The message contained derogatory comments about employee MacDonald.

As a result of the investigations conducted into the above-mentioned matter, the Company held an investigation with Customer Service Representative K. Fitzpatrick on February 24, 1995. The subject matter of this investigation was “the inappropriate use of merlin for other than Company business and conduct unbecoming a CSR.”

On March 24, 1995, Ms. Fitzpatrick’s discipline record was assessed 20 demerit marks for “conduct unbecoming an employee as evidenced by the unauthorized and inappropriate use of merlin.”

The Union believes that the discipline issued to Ms. Fitzpatrick was excessive, particularly in light of what it views as the lack of a developed policy with respect to the use of the Company’s computer network merlin.

The Union progressed a grievance on behalf of Ms. Fitzpatrick requesting that the discipline assessed be removed from her record.

The Company has declined the grievance.

FOR THE UNION:

(SGD.) L. HILDEBRAND

FOR: EXECUTIVE VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) C. GRAHAM

for: EXECUTIVE DIRECTOR, CSC

There appeared on behalf of the Company:

C. Graham – Labour Relations Officer, Montreal

And on behalf of the Union:

L. Hildebrand – Assistant Division Vice-President, Winnipeg
A. Kane – Local Protective Chairman, TCU Trucking Division, Vancouver

AWARD OF THE ARBITRATOR

The evidence discloses that the grievor received personal messages from an employee with whom she was romantically involved, and who was separately disciplined, as related in **CROA 2731**. As in that case, the Company has not established, to a satisfactory degree, that the grievor was made aware of the Company's policy with respect to excessive personal messages being passed on the Merlin system. In the result, it appears that Ms. Fitzpatrick carried on workplace chitchat with her friend over the Merlin system, some of which involved comments which would be plainly offensive to a number of other employees.

In the circumstances, having regard to the fact that the grievor had a clear record at the time of the incident, and had never been disciplined previously over her fifteen years of employment, I am satisfied that a written reprimand or warning would have sufficed to bring to her attention the importance of not abusing the Merlin system by transmitting messages which are potentially offensive to other employees. There is clearly a different order of risk and harm to others when negative or insulting comments are placed upon an electronic e-mail system which, notwithstanding its security, can be accessed by others than, for example, engaging in idle gossip in a private one-on-one conversation.

For the foregoing reasons the Arbitrator allows the grievance, in part. The grievor's record shall be revised to reflect a written warning with respect to the proper use of the Merlin e-mail system.

May 17, 1996

(signed) MICHEL G. PICHER
ARBITRATOR