

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2878

Heard in Montreal, Thursday, 10 July 1997

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Discipline assessed Mr. C. Campbell.

EX PARTE STATEMENT OF ISSUE:

On May 17, 1995, the grievor was assessed with 20 demerits for allegedly spreading “unsubstantiated and unfounded allegations resulting in the reputation of Company supervisors being impugned”, conduct unbecoming a CP employee.

The Union contends that: 1.) The Company admits that “gossip and rumours appear to be part of the Railway heritage”; 2.) The Company cannot prove that the reputations of its supervisors were in fact damaged by this gossip; 3.) The discipline assessed was excessive and unwarranted in the circumstances.

The Union requests that the discipline assessed be rescinded forthwith.

The Company denies the Union’s contentions and declines the Union’s request.

FOR THE BROTHERHOOD:

(SGD.) J. J. KRUK

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

E. MacIsaac	– Labour Relations Officer, Calgary
D. T. Cooke	– Manager, Labour Relations, Calgary
S. Moutinho	– Labour Relations Officer, Calgary

And on behalf of the Brotherhood:

D. Brown	– Sr. Counsel, Ottawa
P. Davidson	– Counsel, Ottawa
J. J. Kruk	– Canadian System Federation General Chairman, Ottawa

AWARD OF THE ARBITRATOR

The Company alleges that the grievor was involved in a deliberate, malicious spreading of false rumours against a number of Company supervisors, to the effect that they were involved in corrupt practices, and in particular in receiving illegal kickbacks from an electrical contractor which performed services for the Company. It alleges that the grievor, employed as a bridgetender at the Pitt River bridge in Vancouver, made serious derogatory statements against the supervisors to an employee of the electrical contractor, TRI-R Systems Inc., electrician Doug Wells.

The statement of Mr. Wells, filed in evidence before the Arbitrator, is the principal testimony substantiating the allegations made by the Company. In a statement taken on March 7, 1995 Mr. Wells relates that when he was working on the Pitt River bridge on February 10, 1995 he was approached by Mr. Campbell who commenced the conversation by discussing management actions in the assignment of employees. The statement then goes on in part, as follows:

He then made a derogatory remark about Jim McLeman and how he was going to get him. He said Jim McLeman had "abused his power" in regard to bid positions for temporary positions.

He talked about his hard work "at compiling all this information". He said "I shouldn't tell you this but I'm going to anyway" I said I'm not really interested and started to walk away. Chris followed me and I stopped when he said "TRI-R wired Chris Hackh's kitchen". I said "No we didn't". He said "It might not have been you, but it was someone from your outfit". I said "If it was some guys from our outfit I would know". He then said "You guys wired Jim McLeman's cabin". I said "No we haven't". He then said "I know how TRI-R works it. Ross pays company officials to get the work". ...

Later in the statement Mr. Wells relates a further comment by Mr. Campbell:

I moved away to the aprons and Chris followed and continued talking. He said "Dave Rogal was doing work for TRI-R Systems on CP Rail's time and was being paid by Ross".

Standing on their own, the statements attributed to Mr. Campbell would involve serious accusations against three Company supervisors, Mr. Hackh, Mr. McLeman and Mr. Rogal. The statements imply that Mr. Hackh misused his supervisory position to have the contractor perform wiring work at his home, that Mr. McLeman did likewise for his recreational cabin and that Mr. Rogal was in a conflict of interest by doing work for the contractor on the Company's time. It also appears that Mr. Campbell raised to the attention of Mr. Wells that Mr. Rogal's wife did bookkeeping work for the contractor TRI-R Systems.

It is common ground that an investigation conducted by CP Police ultimately confirmed that there was no substance whatsoever to the allegations contained in the statements made by Mr. Campbell. Unfortunately, the evidence further discloses that statements of the same kind were made by the grievor to others, some months prior. Bridge & Building Bench Carpenter Bob Wallace provided the Company with a statement, taken on March 28, 1995, confirming that during the course of work which he was performing at the Pitt River bridge in November of 1994 Mr. Campbell told him that Mr. McLeman had electrical work performed on his cabin on Denman Island by TRI-R Systems, and that Mr. Hackh had kitchen wiring done to his house by the same contractor. During the same conversation, according to Mr. Wallace, Mr. Campbell also raised the fact that Mr. Rogal's wife did bookkeeping work for TRI-R Systems. The record discloses that the statements made by Mr. Campbell, and related by Mr. Wells, caused grave concern both to the Company and to the president of TRI-R Systems Inc. In a letter dated April 17, 1995 addressed to the Company, President Ross Johnston of TRI-R Systems wrote as follows:

Dear Sir,

1. Chris Campbell stated that TRI-R Systems Inc. has carried out electrical work at the "cabin" of Mr. Jim McLeman, Bridge & Building Master CP Rail System.

TRI-R Systems Inc. has not at any time carried out electrical or other work for Mr. McLeman at this cabin or any other location. Furthermore, TRI-R Systems Inc. has never carried out work in any form that would benefit Mr. McLeman personally.

2. Chris Campbell stated that TRI-R Systems Inc. has carried out work at the residence of Mr. Chris Hackh, Signals and Communications Maintenance Supervisor of CP Rail Systems.

TRI-R Systems Inc. has not at any time carried out electrical or other work for Mr. Hackh at his residence or any other location. Furthermore, TRI-R Systems Inc. has never carried out work in any form that would benefit Mr. Hackh personally.

TRI-R Systems Inc. has always endeavoured to maintain a professional working relationship with all management personnel of CP Rail System. At no time has TRI-R Systems Inc. or any employee of the company acted in a manner considered improper.

This situation is of grave concern to us as it involves the reputation of this company. If there is any further information that I can be of assistance with, please contact me immediately.

Thank you for your attention to this matter.

Sincerely,

(signed) Ross Johnston, President

Following a disciplinary investigation, the Company concluded that the grievor did involve himself in the malicious defaming of Company supervisors, as a result of which he was assessed twenty demerits. During the course of his own statement, made at a disciplinary investigation conducted on March 30, 1995, the grievor did not deny that he discussed with Mr. Wells the alleged wiring of Mr. Hackh's kitchen by TRI-R Systems as well as electrical work allegedly performed on Mr. McLeman's cabin. According to his recollection, however, his statement to Mr. Wells was "I understand that TRI-R wired Chris Hackh's kitchen", and that he did not assert that Mr. McLeman's cabin had been wired "... but rather I asked if you guys wired Jim McLeman's cabin or had any knowledge of this being done." He further states that he has no recollection of having stated that Mr. Rogal was performing work for TRI-R Systems on CP Rail's time.

During the course of his statement Mr. Campbell attributed his understanding of work allegedly performed on Mr. Hackh's kitchen to a statement to that effect made to him by S&C Maintainer Herb Anderson. However, Mr. Anderson categorically denies having made any such statement to the grievor. Further, under questioning by the Company's investigator, Mr. Campbell relates that the allegation of electrical work having been done at Mr. McLeman's cabin originated in a statement to him from Mr. Ken Steen. He says that during a conversation in early 1994 Mr. Steen made a comment to the effect that "... he would not be too surprised if there was a new pole line going to J. McLeman's cabin". During his statement Mr. Campbell confirmed that he had no independent evidence or knowledge of such a pole line having been in fact installed, stating "Mr. Steen has the uncanny ability of being correct." When asked whether he believed Mr. Steen, he replied to the investigating officer: "I believed it to be a pretty good unsubstantiated rumour."

During the course of his statement Mr. Campbell gave indications that he was co-operating with CP Police in investigating corrupt practices in wrongdoing by the supervisors in question. A close examination of his statement, however, leaves substantial doubt as to whether Mr. Campbell was not himself the instigator of that investigation. Questions and answers 39 to 45 read as follows:

Q39 *Did you question Mr. Steen as to whether or not he had any proof of this work actually being done?*

A39 I don't recall.

Q40 *But as in your answer above, you figured that this was a good unsubstantiated rumour whether it was true or not?*

A40 At the time, yes.

Q41 *Some 1 year later, when speaking with Doug Wells on February 10th, you made specific mention that TRI-R wired J. McLeman's cabin. Why?*

A41 I had been previously interviewed by CP Police and I was trying to verify if some of these rumours were true.

- Q42 *Were you doing this on your own or did CP Police request this of you?*
- A42 I was doing this in conjunction with CP Police.
- Q43 *But was it at their request?*
- A43 Yes
- Q44 *To your knowledge, was this matter (i.e. ... wiring at J. McLeman's cabin) already under investigation by CP Police or did you bring it to their attention?*
- A44 I don't recall who initiated this matter.
- Q45 *It may have been you?*
- A45 Yes, but I don't know.

Upon a review of the statements filed in evidence, the Arbitrator is distinctly unimpressed with the answers provided during the course of the investigation by Mr. Campbell in explanation of the statements which he made to Mr. Wells on February 10, 1995. Firstly, the account given by Mr. Wells is candid and straight-forward. There is nothing in the evidence before the Arbitrator to suggest that Mr. Wells would have had any reason to create a false accusation against Mr. Campbell in respect of what was said on that occasion. Further, the independent statement of B&B Bench Carpenter Bob Wallace confirms that virtually identical accusations of conduct amounting to criminal fraud against Mr. McLeman and Mr. Hackh were uttered to him by Mr. Campbell in virtually the same terms, some months previous in November of 1994. With respect to motive, it is noteworthy that Mr. Wallace relates during the course of his statement that he believed that the grievor mentioned that he was unhappy with Mr. McLeman and blamed him for his own career problems. Similar comments appear in the statement of Mr. Wells, including that Mr. Campbell "... made a derogatory remark about Jim McLeman and how he was going to get him."

In mitigation, Counsel for the Brotherhood submits that it is not uncommon for rumours to circulate in the workplace, sometimes concerning supervisors. The Brotherhood further notes that it appears that Mr. Campbell may have received the substance of these rumours from others, and was merely repeating what he had heard, some of which may have been discussed during the course of a police investigation.

The Arbitrator has some difficulty with those submissions. Firstly, participation in a police investigation, assuming such occurred, is not a licence to defame. Further, as noted above, it is far from clear that the grievor was not himself the instigator of the police investigation which he would now seek to assert as a shield for certain of the defamatory statements which he made, on more than one occasion, over a period of several months. The Arbitrator appreciates that the workplace can be the site of idle talk and rumours, both true and false. For the purposes of discipline, when evaluating the relaying of unflattering stories or unkind comments about others, including supervisors, a degree of tolerance is appropriate in a society which values freedom of expression. There is, however, a distinct difference between what may be generally understood as idle gossip on the one hand and, on the other hand, repeated and detailed accusations of criminal or quasi-criminal conduct by an individual, be it an employee or supervisor, contractor or client, calculated to destroy a person or company's good name and professional reputation. The Arbitrator has little doubt that reasonable employees are able to make the distinction between idle gossip and serious defamatory accusations calculated to attach to an individual the taint of criminal fraud. Unfortunately, as the evidence discloses, Mr. Campbell exhibited a gross indifference or recklessness as to that distinction, and became the vehicle of gravely defamatory false accusations against three separate Company supervisors, and a principal contractor of the Company.

It is well established, both in Canadian arbitral jurisprudence generally, and in the decisions of this Office, that statements calculated to defame and destroy the reputation of an employee or a supervisor can be the basis for serious disciplinary action, up to and including discharge. (*See Re Canadian Broadcasting Corporation and Canadian Union of Public Employees, Local 675 (1982) 6 L.A.C. (3d) 415 (Frumkin); Re Canadian Pacific Limited and Brotherhood of Maintenance of Way Employees (1996), 57 L.A.C. (4th) 1997, 89 (M.G. Picher) (CROA 2751).*) The measure of discipline in the instant case must, I think, depend in part on whether the statements made by the grievor are best characterized as deliberate and malicious, or merely careless or inadvertent. Regrettably, I am compelled to the conclusion that Mr. Campbell was measured and deliberate in his statements to Mr. Wells, as indeed he was in his earlier almost identical statement made to Mr. Wallace. Normally malicious rumours are untraceable, like feathers in the wind. However, in this case the record before the Arbitrator provides a

unique insight into the genesis and growth of at least one defamatory statement. It is disturbing to perceive the willingness of Mr. Campbell to take the speculative and unkind comment attributed to Mr. Steen, to the effect that he would not be surprised to learn that a hydro pole had been installed at a supervisor's cabin, and convert it to the affirmative statements made to Mr. Wells; "You guys wired Jim McLeman's cabin ... Ross [Johnston] pays company officials to get the work."

It may be, as Mr. Campbell asserts, that he was so oblivious to normal standards of human decency as not to appreciate that his statements could constitute actionable defamation. Even assuming, without necessarily accepting, that view of the matter, he is plainly in need of clear direction, of a disciplinary nature, to cause him to appreciate the seriousness of his statements and actions.

On the whole, the Arbitrator is satisfied that the grievor did knowingly and deliberately make defamatory statements in respect of the three named Company supervisors to Mr. Wells on or about February 10, 1995, and that he did so in ignorance of the truth of his statements, and in reckless disregard as to their validity. He knew, or reasonably should have known, that his words were calculated to defame the individuals concerned by associating them with fraudulent criminal conduct and a serious conflict of interest. I am satisfied that the Company has a legitimate interest to protect in taking appropriate disciplinary action to ensure that the grievor is made to understand the seriousness of his actions, and that other employees are deterred from similar conduct. In the circumstances, notwithstanding the grievor's good prior disciplinary record, the assessment of twenty demerits was an appropriate, if not minimal, measure of discipline for the conduct in question, and it should not be disturbed.

For the foregoing reasons the grievance is dismissed.

July 16, 1997

(signed) MICHEL G. PICHER
ARBITRATOR