

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2956

Heard in Calgary, Thursday, 14 May 1998

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

On October 15, 1996 the Company held an investigation regarding Conductor W.R. Plomish's "deportment and behaviour before the public while employed as a conductor on the West Coast Express" commuter train. Subsequent to this investigation, Conductor Plomish was restricted from working on West Coast Express commuter trains.

JOINT STATEMENT OF ISSUE:

The Council contends that the Company's investigation did not establish grounds to warrant the above restriction and that the investigation into this matter was not conducted in a fair and impartial manner for several reasons, including the fact that a Company representative was not present for questioning and several alleged letters of complaint were anonymous and referred to incidents that allegedly occurred several months before the investigation.

The Council requested that the Company reinstate Conductor Plomish to the West Coast Express Commuter Rail Service and has further requested that he be made whole for the Company's actions.

The Company contends that the restriction from working commuter trains was appropriate in the circumstances and has denied the Council's contentions and request for removal of the restriction.

FOR THE COUNCIL:

(SGD.) J. KNOWLES

FOR: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) K. E. WEBB

FOR: B. C. DISTRICT GENERAL MANAGER

There appeared on behalf of the Company:

R. V. Hampel	- Labour Relations Officer, Calgary
K. E. Webb	- Manager, Labour Relations, Calgary
M. E. Keiran	- Director, Labour Relations, Calgary
G. S. Seeney	- Manager, Labour Relations, Calgary

And on behalf of the Council:

D. E. Ellickson	- Counsel, Toronto
L. O. Schillaci	- General Chairperson, Calgary
J. K. Jeffries	- Vice-General Chairperson, Cranbrook
J. Knowles	- Vice-General Chairperson, Calgary
E. DiCredico	- Vice-General Chairperson, Nanaimo
D. H. Finnson	- Secretary/Treasurer, Saskatoon
W. R. Plomish	- Grievor

AWARD OF THE ARBITRATOR

The record before the Arbitrator establishes that letters of complaint with respect to the conduct of Conductor Plomish while in passenger service on the West Coast Express commuter train were received by the commuter train company, which employs the Company to operate its trains in the Vancouver area. As a result of those complaints, West Coast Express wrote to the Company, on September 13, 1996, requesting that the grievor be removed from West Coast Express service. The Company then proceeded to conduct a disciplinary investigation of Mr. Plomish, following which it advised him that he was restricted from working in the commuter train service.

The letter of complaint requesting the removal of Mr. Plomish from passenger service was accompanied by an anonymous letter which West Coast Express received from a female passenger. She complained that the grievor continually affronts her with arguments concerning his personal political beliefs, to the point that she changed her travel arrangements to avoid contact with him. The record discloses that further letters of complaint were received by the Company, apparently gathered by Conductor John Cowan, an individual with whom the grievor had a long standing antagonistic relationship. Those letters include statements of several persons, including passengers and fellow employees, to the effect that Mr. Plomish engaged openly in making extremely negative statements about the professional ability of Mr. Cowan as a railway conductor.

Counsel for the Council objects to the Company having allowed any letters other than the single letter of complaint initially received by West Coast Express into the record as part of the disciplinary investigation of the grievor. He submits that to allow the additional letters in was an improper expansion of the disciplinary process. The Arbitrator cannot agree. The nature and scope of the grievor's conduct which the Company felt justified the undertaking of a disciplinary investigation was for it to determine. That was not a matter to be defined or circumscribed by West Coast Express. The additional letters of complaint were dealt with in a timely manner, and copies of them were provided to the grievor well in advance of the disciplinary investigation. In the circumstances the Arbitrator cannot sustain the suggestion that there was any improper procedure in respect of the receipt of the additional letters of complaint, or reliance upon them for the purposes of assessing discipline, by removing the grievor from commuter passenger service.

As evidenced from the record of the grievor's own disciplinary investigation, he categorically denies the allegations made against him with respect to his statements concerning the professionalism of Mr. Cowan. The grievor was in attendance at the arbitration hearing, and was prepared to testify to that effect. If his direct evidence stood against the hearsay evidence of the letters of complaint, the Arbitrator might be compelled to conclude that the allegation against him were not proved. That is not what transpired at the hearing, however.

The Company called as its witness in the arbitration proceeding Mr. John D'Arcy Gardner. Mr. Gardner testified that he was a passenger on the grievor's train on or about August 29, 1996. He relates that during the course of a delay of the train the grievor struck up a conversation with him, during which he asked him if he knew Conductor John Cowan. When he responded that he did, Mr. Plomish asked how he had found his service as a conductor, to which Mr. Gardner responded that he had no complaints about him. At that point, according to the evidence of Mr. Gardner, Mr. Plomish stated that in fact Mr. Cowan was not a professional trainman, but "... only a train buff." He went on to say words to the effect that he had been an unsatisfactory employee in his rail service and was "a disaster waiting to happen."

Mr. Gardner relates that he found the grievor's comments disturbing, both from the standpoint of their fairness to Mr. Cowan, whom he knew as a regular conductor on the commuter train which he normally took, and from the standpoint of the safety of operations which they raised. He relates that he then spoke to Mr. Cowan about Mr. Plomish's comments, as a result of which he decided to write a letter of concern to the Company, to be transmitted via Mr. Cowan.

The grievor's rebuttal to the statement of Mr. Gardner is to the effect that it was the passenger who stopped him and insisted on asking about Conductor Cowan. The grievor does not deny that he might have said that Mr. Cowan was not one of his favourite people, and was more of a railway buff than a railroader. The grievor suggests that Mr. Gardner's insistence on pursuing the subject, when he himself wished to go about his business, indicates that the passenger's conversation was a form of entrapment, and that he was put up to it by Mr. Cowan. In his rebuttal letter he states, in part:

Given the above, I think it is obvious this letter was not only solicited, this man was either sent by John or on his own volition, engaged me in a conversation with a view he would try to get me to say something John could use against me.

The Arbitrator rejects that suggestion out of hand. Mr. Gardner impresses me as an extremely careful and candid witness. His verbal testimony at the arbitration hearing was consistent with the content of his initial letter of complaint. He indicated during the course of his testimony, which I accept without qualification, that he knew Mr. Cowan only as an acquaintance whom he saw periodically during the course of his travels as a commuter passenger. It is apparent to the Arbitrator that Mr. Gardner's letter was prompted by his own basic decency, and not by what Mr. Plomish views as a conspiracy orchestrated by Mr. Cowan.

Alternatively, even if I were to accept the version of the encounter related in the rebuttal of Mr. Plomish, there is still ample cause for serious concern. As a professional dealing with the public it would have been incumbent on the grievor to simply decline to say anything of substance to an officious passenger asking questions about the quality of another employee's service in a safety sensitive industry serving the public. On either account, the incident involving Mr. Gardner raises substantial concerns and, if anything, gives corroboration to the numerous other letters of complaint made against Mr. Plomish by passengers and fellow employees.

In the result, the Arbitrator is satisfied that the Company was amply justified in restricting Mr. Plomish from passenger service, as it did. As a common carrier contracted to operate trains serving the public, it obviously has a valid business interest to ensure that its employees are at all times discreet and professional in their dealings with passengers. I am satisfied that the grievor fell well short of the necessary standard, and that the Company was justified, if not obligated, to take the action which it did.

For the foregoing reasons the grievance is dismissed.

May 19, 1998

(signed) MICHEL G. PICHER
ARBITRATOR