

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2960

Heard in Montreal, Thursday, 11 June 1998

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Appeal of discipline issued to Mr. Sylvain DeBellefeuille of Montreal, who was assessed twenty (20) demerits and a four (4) day suspension regarding the alleged hitting of a supervisor and for having disobeyed instructions from Supervisor Paul Cunningham.

JOINT STATEMENT OF ISSUE:

The Union contends that:

On August 6, 1997 approximately 11:25 Mr. DeBellefeuille began his meal period in the terminal lunch room. Several minutes later, Supervisor Cunningham came into the lunch room and in an arrogant and impolite tone, demanded Mr. DeBellefeuille's pager. The grievor responded, no, that he was on his lunch break and he would get it after.

After a couple of demands from the supervisor, the grievor asked him the reason for his demands (the paper). The supervisor did not want to answer that question and did not indicate whether or not it was urgent for him to get the pager.

By his own testimony, Mr. Cunningham said "The fact that you are on your lunch break does not interest me since you are on company property."

Further to the allegations that the employee hit his supervisor: as per the notes of the interview, Paul Cunningham went behind the grievor to take the pager without the grievor's knowledge. When Mr. DeBellefeuille felt the hand of Mr. Cunningham trying to take the pager he, in reflex, moved the supervisor's arm away and as a result the pager fell on the ground.

For all of the above mentioned reasons the Union requested that wages lost during the 4 day suspension, which was given as a disciplinary measure, be reimbursed and that the 20 demerits unjustly imposed be stricken from Mr. DeBellefeuille's record.

The Company declined the Union's request.

FOR THE UNION:

(SGD.) R. Nadeau
DIVISION VICE-PRESIDENT

FOR THE COMPANY

(SGD.) P. D. MacLEOD
VICE-PRESIDENT, OPERATIONS

There appeared on behalf of the Company:

R. Dupuis – Regional Manager, Montreal
P. D. MacLeod – Vice-President Operations, Toronto
D. Cardi – Manager – P&D, Montreal

And on behalf of the Union:

R. Nadeau – Division Vice-President, Quebec

R. Pichette	– Grievance President, Montreal
P-A Paradis	– Witness
S. De Bellefeuille	– Grievor

AWARD OF THE ARBITRATOR

Mr. DeBellefeuille was disciplined by the assessment of 20 demerits for insubordination and a four day suspension for hitting a supervisor. The Arbitrator judges that the grievance must be allowed, in part.

Given the facts, it is not disputed that the grievor refused to hand over his pager to his supervisor, Mr. Cunningham. The latter came to the lunch room while the grievor was having his meal. When Mr. Cunningham asked him to hand over his pager, Mr. DeBellefeuille replied that he was eating, and that it would have to wait. It is not disputed that at that moment Mr. DeBellefeuille had his pager attached to his belt. He could have given the pager to his supervisor without any inconvenience. It appears as well that Mr. Cunningham did not reply to the grievor's question, as to why he wanted his pager, and that Mr. Cunningham's tone of voice was not the most diplomatic.

Unfortunately, when Mr. DeBellefeuille showed himself to be recalcitrant, despite numerous requests for the pager on the part of the supervisor, the latter edged his way behind the grievor in an attempt to remove the pager from its case while Mr. DeBellefeuille was eating. Mr. DeBellefeuille felt the presence of a hand while it was coming behind him, jumped up and slapped at the arm of Mr. Cunningham. The pager then fell on the floor, from where it was retrieved by Mr. Cunningham.

The Arbitrator considers that the grievor rendered himself liable for discipline when he refused to give his pager to Mr. Cunningham when asked to do so. Even if it would have been advisable to explain to the grievor why he wanted his pager, it is still a fact that the pager is the property of the Company. As an employee Mr. DeBellefeuille was required to hand it over on request, with neither debate nor discussion. Even if the manner in which Mr. Cunningham addressed the employee was lacking in respect and professionalism, the grievor was not justified in refusing the legitimate and reasonable order of his supervisor. For these reasons the Arbitrator concludes that the twenty demerits assessed for insubordination were justified and that this aspect of the discipline should not be disturbed.

However, a different conclusion arises concerning the suspension of Mr. DeBellefeuille for having struck the arm of Mr. Cunningham. In attempting to remove the pager from the person of Mr. DeBellefeuille, in the manner of a pickpocket, the supervisor risked provoking the normal reaction of a person who feels that his physical integrity is being affronted. It is evident that Mr. DeBellefeuille was surprised by the covert gesture of Mr. Cunningham and that he simply reacted reflexively to remove this hand which was touching him without permission. This is not, therefore, a physical aggression on the part of the grievor, but rather a spontaneous reaction to the thoughtless action on the part of the supervisor. For this aspect of the event, which was ridiculous and undignified on the part of both adults, the Arbitrator is of the opinion that there was no cause for disciplining the grievor.

For these reasons, the Arbitrator orders that the four day suspension be removed from his record, and that the grievor be compensated for all wages and benefits lost.

June 12, 1998

(signed) MICHEL G. PICHER
ARBITRATOR