

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3024

Heard in Montreal, Wednesday, 13 January 1999

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Appeal of discipline assessed to Mr. Sylvain De Bellefeuille of Montreal, who was assessed 2 days' suspension for allegedly uttering coarseness to a supervisor.

EX PARTE STATEMENT OF ISSUE:

The Union contends that on February 03, 1998, when Mr De Bellefeuille arrived at the terminal Supervisor Cantacessa gave him a letter. The grievor opened it and when he read that he was disciplined with 4 demerits and a one day suspension he replied something like "fuck Jerry it is stupid". Under no circumstances did he lack respect or utter coarseness to anybody.

During the interview the grievor clearly demonstrated that the words that Mr. De Bellefeuille used were not those which were reported by Dean Cardi.

The discipline was unwarranted, unjust and excessive.

The Union requests that Mr. De Bellefeuille be reimbursed for the 2 days' suspension plus overtime that he would have made if he had not been suspended.

The Company denied the Union's request.

FOR THE UNION:

(SGD.)R. NADEAU
DIVISION VICE-PRESIDENT

There appeared on behalf of the Company:

R. Dupuis – Regional Director, Montreal

And on behalf of the Union:

D. J. Dunster – Executive Vice-President, Ottawa

R. Nadeau – Divisional Representative, Quebec

J. Scrivo – Local President, Montreal

S. De Bellefeuille – Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator in this files causes substantial concern. The grievor is a long service employee, first hired in September of 1978. To all accounts he has been a good employee over the years. Unfortunately, as reflected in the instant grievance, in recent times he has incurred substantial disciplinary record, largely involving an apparently recurring tendency to resort to inappropriate verbal outbursts in the workplace.

The incident giving rise to this grievance occurred on February 3, 1998. At approximately 12:30 p.m. the grievor was handed a notice of discipline by supervisor R. Cantacessa. Mr. De Bellefeuille then read the letter, advising him that he was assessed four demerits plus a one day suspension for an incident which occurred on January 8, 1998. It does not appear disputed that the discipline results from an incident in which Mr. De Bellefeuille struck the cab door of a contractor's truck in what is described by the Company as an intimidating gesture. That incident, which is not the subject of this grievance, might well have led to the grievor's discharge, as his record then stood at fifty-five demerits. By assessing a further four demerits, coupled with a one day suspension, for the incident in question the Company was clearly attempting to avoid the grievor's discharge.

Unfortunately, for reasons he may best appreciate, Mr. De Bellefeuille did not view the matter as the Company did. According to the evidence of Mr. Cantacessa, which the Arbitrator accepts without reservation, upon reading the notice of the four demerits and the one day suspension Mr. De Bellefeuille made extremely negative comments to all within earshot with respect to the Company's managers. Mr. De Bellefeuille account is that when he saw the letter he swore out loud, and upon being cautioned with respect to his language by Mr. Cantacessa, "I told him to fuck off, « tabernac » ... I had a day's suspension". Mr. Cantacessa submits that the language was in fact worse, and that the grievor referred to management as a "gang of dirty bitches, gang of masturbators". In his own statement during the Company's investigation the grievor sought to diminish the impact of his words stating "I simply expressed a general opinion as can happen with any driver or supervisor, shoptalk."

The Arbitrator cannot agree. There can be little doubt that Mr. De Bellefeuille meant to address disrespectful and insulting words to a supervisor, making general reference to the Company's management. What is most regrettable in the case at hand is that it appears to be consistent with prior disciplinary incidents appearing on the grievor's record which reflect a serious lack of control of his comments towards others. In 1991 Mr. De Bellefeuille was assessed thirty demerits for abusive language in dealing with a bank. Approximately one year prior to the incident giving rise to this grievance Mr. De Bellefeuille was assessed twenty demerits for referring to an individual at work as a "dirty nigger".

Progressive discipline appears to have failed to convey to this otherwise good, long service employee the extreme precariousness of his disciplinary situation. Faced with the incident involving Mr. Cantacessa, the Company assessed a further two day suspension. Any further demerits would have placed the grievor in a dismissable position. Unfortunately, Mr. De Bellefeuille doesn't acknowledge the impropriety of his words. It is disturbing that an employee of such long record should fail to appreciate the importance of being careful with his utterances in the workplace. Even accepting that the discipline assessed against him for striking the contractor's truck door was excessive, Mr. De Bellefeuille should by now understand that the proper course of action for him was to accept the letter given to him by management without comment and resort to the grievance procedure if he felt that the discipline was excessive. There is every reason to believe that both management and the Union have made all reasonable efforts to make Mr. De Bellefeuille understand the need to be at all times respectful in his verbal dealings with others. He must surely appreciate the precariousness of his present situation.

For the reasons related, the Arbitrator is satisfied that the Company did have just cause to assess discipline against Mr. De Bellefeuille for words which were plainly inappropriate in the workplace. Given his prior record in this regard the Arbitrator is satisfied that the assessment of a two day suspension was appropriate, and should not be disturbed. The grievance is therefore dismissed.

January 18, 1999

(signed) MICHEL G. PICHER
ARBITRATOR