

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3030

Heard in Montreal, Tuesday, 9 February 1999

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The debiting of Mr. Pasveer's record with 40 demerits for engaging in a verbal confrontation, while using inappropriate language, with fellow employees on June 2, 1998.

JOINT STATEMENT OF FACTS:

On arriving at work on June 2, 1998, the grievor found that the assigned parking for clerks was occupied by vehicles belonging to yard crews and the Pulldown Supervisor. In accordance with past practice, the grievor subsequently sought to part in the Pulldown Supervisor's parking stall but found that it was occupied by a Mechanical Services truck, so he parked behind this vehicle.

After reporting for duty the grievor continued to monitor the status of the Mechanical Services truck and upon seeing it leave, went outside, where a verbal confrontation with two Mechanical Services employees, in the vehicle, occurred.

In response to a written complaint filed by the Mechanical Services employees, the Company commenced an investigation, resulting in the assessment of 40 demerits against the grievor.

JOINT STATEMENT OF ISSUE:

The Union contends that the investigation was neither fair nor impartial. The Union further contends that the matter was a routine workplace incident that does not warrant discipline. Accordingly, the discipline should be removed from the grievor's record.

The Company had declined the Union's request.

FOR THE UNION:

(SGD.) P. J. CONLON
ASSISTANT DIVISIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) R. HAMPEL
FOR: MANAGER, YARD OPERATIONS

There appeared on behalf of the Company:

R. Hampel – Labour Relations Officer, Calgary
B. McCusker – Yard Supervisor, Calgary
M. Martin – Witness, Calgary

And on behalf of the Union:

P. J. Conlon – Assistant Divisional Vice-President, Toronto
J. Rumore – Local Chairman, Winnipeg
W. pasveer – Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond substantial controversy, that the grievor did engage in a heated exchange with two other unionized employees during the course of his tour of duty on June 2, 1998. It appears that the grievor's ire was provoked by the fact that the two other employees, members of a shopcraft bargaining unit, parked their truck in a place which would otherwise normally have been available to Mr. Pasveer. As the two employees were removing their truck from the parking stall in question Mr. Pasveer left his work station to come and confront them, obviously displeased that they had compelled him to park his own truck behind theirs, requiring him to come and move it upon their departure.

Upon a careful review of the statements taken during the course of the investigation the Arbitrator is satisfied that Mr. Pasveer did exhibit an unacceptable degree rudeness in his remarks to the two employees in question. Even allowing for a certain degree of "shop talk" which might occasionally involve some four letter words, it appears clear that the grievor engaged in a sustained diatribe directed at the two employees in a manner that went beyond what can be qualified as normal and acceptable conduct.

Different considerations arise, however, when the issue of the quantum of penalty is considered. The assessment of forty demerits for a single rude verbal exchange between employees is, in my opinion, beyond what is appropriate or necessary to bring home to the grievor the importance of being civil in his communications with others in the workplace. While it is true that Mr. Pasveer has some prior record in this regard, it is not insignificant that his record was clear at the time of the incident, and that he has evidenced real improvement in respect of this aspect of his performance. In all of the circumstances I am satisfied that the assessment of fifteen demerits would have been appropriate. Nor am I persuaded that there was any violation of the grievor's right to a fair and impartial investigation as disclosed on the record before me.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor's record be amended to reflect the assessment of fifteen demerits for the incident of June 2, 1998.

February 12, 1999

(signed) MICHEL G. PICHER
ARBITRATOR