

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3052

Heard in Calgary, Thursday, 13 May 1999

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Kevin Templeton (shop steward) removed from bulletined dockman's duties by Supervisor Jason Zylstra.

EX PARTE STATEMENT OF ISSUE:

The Union filed a grievance on November 27, 1998 regarding this matter noting a violation of article 2.1 of the collective agreement. To date, the Company has denied the Union's request to settle the matter.

The Union contends the Company has used the grievor's reassignment as a form of discipline against the grievor in retaliation for his workplace disagreement with Supervisor Zylstra in October 1998. We say the Company actions are contrary to the intent of article 6 of the collective agreement.

The Company contends that the grievor was displaced to allow other employees to be cross-trained and that it was management's right to assign the work. The Company denies any violation of article 2.1 of the collective agreement.

FOR THE UNION:

(SGD.) A. KANE

ASSISTANT DIVISION VICE-PRESIDENT

There appeared on behalf of the Company:

P. D. MacLeod	– Vice-President, Operations, Toronto
E. Donnelly	– Regional Manager, British Columbia
J. Zysstra	– Supervisor, Vancouver

And on behalf of the Union:

A. Kane	– Chief Steward, Western Canada, Vancouver
D. Neal	– President, Local 1976, Toronto
B. Plante	– Local Protective Chairman, Calgary
K. Templeton	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, to the satisfaction of the Arbitrator, that the grievor, Mr. Kevin Templeton, was improperly disciplined by his immediate supervisor, Mr. Jason Zylstra, without adherence to the procedural provisions of the collective agreement. It appears that during the course of a tour of duty in October of 1998 Mr. Templeton was requested by Mr. Zylstra to change assignments with a junior employee. The grievor refused. It is common ground that Mr. Templeton was then performing a relatively sophisticated form of work which involved pulling freight from the conveyor belt for a number of delivery trucks, a task which, as a senior employee in the dockperson classification, he had performed for some three years. The following day the grievor was advised by Mr. Zylstra that he was no longer to perform the same work, and would thereafter be assigned to the job of pulling freight from trailers for the Vancouver Island terminals, a job requiring less skill, traditionally assigned to junior employees. It appears that the grievor's assignment has remained unchanged from that time to the present, a period of some seven months.

Mr. Zylstra sought to justify his action on the basis that he wanted to train a junior employee in the work previously being performed by Mr. Templeton. He states that on the evening Mr. Templeton refused to accept the transfer in assignment, Mr. Zylstra's request was prompted by the fact that the junior employee was not performing work at a sufficient level of efficiency. I have little doubt that the initial request made of Mr. Templeton may have been in good faith, for the purpose of having Mr. Templeton accomplish work with which the junior was having problems. However, I have greater difficulty with the plausibility and credibility of Mr. Zylstra's account as to the subsequent failure to return the grievor to work the more skilled assignment which he had held for a number of years, and which I am satisfied has traditionally been performed by more senior employees in the position of dockperson, which Mr. Templeton then held. Very simply, I do not find credible the account of Mr. Zylstra that the seven month assignment of the same junior employee to the work formerly performed by Mr. Templeton was initially done, and has continued to this day to be done, solely for the purpose of training the junior individual. On the contrary, it appears to the Arbitrator that the only rational understanding of what has transpired is a desire on the part of the supervisor to send Mr. Templeton to Coventry for his initial refusal to switch places with the junior employee. While Mr. Templeton's refusal might well have been the subject of proper discipline, it cannot justify measures of indirect punishment through the deliberate and sustained assignment to him of less desirable work, to advantage a junior employee well beyond a reasonable period of training.

For the foregoing reasons the grievance is allowed. While there does not appear to have been any loss of wages to the grievor by reason of the Company's actions, the Arbitrator nevertheless declares that the Company improperly assessed discipline against Mr. Templeton, and directs that he be reinstated into the assignment from which he was removed, forthwith.

May 14, 1999

(signed) MICHEL G. PICHER
ARBITRATOR