

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3144

Heard in Montreal, Wednesday, 13 September 2000

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (UNITED TRANSPORTATION UNION)

DISPUTE:

The discipline assessed the record of R. Rourke, Yardman at MacMillan Yard.

JOINT STATEMENT OF ISSUE:

On February 17, 2000, the grievor was involved in an incident with a Transportation Supervisor. At the conclusion of the formal investigation, the Company assessed the grievor's disciplinary record a thirty day suspension.

The Council requested that the Company remove the suspension from the grievor's record, and that he be made whole.

The Company has denied the Council's request.

FOR THE COUNCIL:

(SGD.) R. J. LONG
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) F. O'NEILL
FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. C. McDonnell	– Counsel, Montreal
P. Sutor	– General Supervisor – Transportation, Toronto
G. Wolnairski	– General Supervisor – Transportation, Toronto

And on behalf of the Council:

R. J. Long	– General Chairperson, Brantford
J. Robbins	– Vice-General Chairperson, Sarnia
R. Rourke	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator does disclose that the grievor used intemperate and improper language in his communication with supervisor Paul Sutor during the course of his tour of duty on the 0800 East Control assignment at MacMillan Yard on February 17, 2000. Upon a review of the whole of the evidence, however, the Arbitrator is persuaded that the discipline assessed against the grievor, a suspension of thirty days, was excessive.

The evidence discloses that supervisor Sutor was alerted by Yard Coordinator (Yardmaster) Bob Harrison to the fact that the locomotive operated by the grievor's crew had been idle and unproductive for a period of approximately fifteen minutes on the lead track. The undisputed evidence of the grievor, which emerged during the course of the Company's investigation, is that in fact his train was then blocked on the lead by reason of conflicting traffic placed in the way of the grievor's locomotive by Yard Coordinator Harrison.

When Transportation Supervisor Paul Sutor proceeded to the location of the grievor's assignment to speak with him, the grievor did speak to Mr. Sutor in an agitated tone of voice. While there is some difference between the grievor and Mr. Sutor as to precisely what was said, the Arbitrator accepts the account of the conversation recorded by Mr. Sutor. When Mr. Rourke asked Mr. Sutor what the problem was the supervisor responded "Your lack of efficiency seems to be the problem." To that Mr. Rourke replied "This is fucking harassment, I'm going to write this up!" When Mr. Sutor explained that it was his obligation to follow up on the Yard Coordinator's complaint Mr. Rourke responded "That's bullshit, you can ask any other yardmaster that I work for and no-one else has a problem with the way I work except for that fucking ass-hole, the Pig Farmer."

When Mr. Sutor cautioned the grievor that his choice of words and tone were unacceptable in addressing a supervisor, Mr. Rourke responded "I get fucked by this guy constantly and you guys as fucking managers of the company should be doing something about it." At that point the grievor was taken out of service by Mr. Sutor. Following a disciplinary investigation, he was assessed a thirty day suspension for insubordination and conduct unbecoming an employee.

The Arbitrator is satisfied that the choice of words and the tone of voice exhibited by Mr. Rourke in addressing Mr. Sutor was improper, and was deserving of some measure of discipline. However, in assessing the appropriate degree of discipline a number of factors must be taken into account. As prior decisions of this Office have indicated, heated exchanges in the workplace can result in varying forms of discipline. In respect of discipline for verbal insubordination the reported cases appear generally to range from a written reprimand to thirty demerits for such conduct, depending upon the circumstances of the particular case and the grievor's own disciplinary record (see, e.g., **CROA 511, 816, 983, 1562 and 2871**). To be sure extreme conduct, such as the making of physical threats or death threats has resulted in greater discipline, up to and including discharge (see, e.g., **CROA 1701**) or a relatively lengthy suspension (**CROA 1707 and 2715**).

The discipline assessed against Mr. Rourke is clearly out of keeping with established standards, particularly in cases which do not involve any insult or threat to management, but merely the excessive expression of displeasure about another employee. The jurisprudence of this Office, and Canadian arbitral jurisprudence generally, does not reflect the assessment of a one month suspension for conduct of the type disclosed in the case at hand.

In addressing the instant case it is important to bear a number of mitigating factors in mind. Firstly, there was in fact no inefficiency or failure to be productive shown on the part of the grievor, notwithstanding the unfortunate choice of words by Mr. Sutor in first addressing him. Secondly, as disclosed at the conclusion of the Company's investigation, it is not disputed that the grievor's train was in fact held by reason of other movements under the control of Traffic Coordinator Harrison, the very person who levelled the complaint which caused Mr. Sutor to attend at the grievor's work location. In the result, it is fair to say that the grievor was understandably frustrated by the suggestion of Transportation Supervisor Sutor that he and his crew were somehow at fault. In addition, the conversation between Mr. Rourke and Mr. Sutor was private, out of the hearing of any other employee.

The facts also disclose that the grievor was not directly insulting towards to Mr. Sutor. It is clear that his comments were related entirely to an employee of another bargaining unit, Yard Coordinator Harrison, albeit in unacceptable terms. The only indirect challenge to management's authority might emerge, obliquely, from the grievor's suggestion that there should be better management of the switching process and closer control of Traffic

Coordinator Harrison by Company officers. The record also discloses an isolated incident, in that the grievor has never previously been assessed any discipline for insubordination, and that his record stood at five demerits at the time of the incident.

On the basis of the material before me, I must agree with the position of the Council that the Company's assessment of a thirty day suspension was an over-reaction in the circumstances. Nor can it be justified on the basis of using Mr. Rourke as an example to other employees to deal with what management appears to have felt was an overall lack of respect in employee communications generally in the workplace. While it obviously open to management to deal with a general problem by raising the level of discipline for a particular form of infraction, such a change in course would normally require that a proper warning be issued to the workforce. To take any other approach is to lull unsuspecting employees into a false sense of security in a manner which is unfair and inconsistent with notions of just cause. The material before the Arbitrator would suggest that Company supervisors had acquiesced in extreme "shop talk" on the part of employees before coming down extremely hard on Mr. Rourke.

I am satisfied that the assessment of a three day suspension would have been ample in the circumstances to convey to Mr. Rourke the impropriety of addressing a supervisor in the manner which he did, even if the target of his remarks was another employee. The grievance is therefore allowed in part, the grievor's record shall be amended to reflect a three day suspension for the incident of February 17, 2000, and he shall be compensated for the balance of his wages and benefits lost.

September 18, 2000

(signed) MICHEL G. PICHER
ARBITRATOR