

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3148

Heard in Montreal, Wednesday, 11 October 2000

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS LOCAL 1976 STEELWORKERS

DISPUTE:

Employee Pat Tassone being disciplined 40 demerits for an incident that resulted in the termination of his employment as his employment record then stood over 60 demerits.

JOINT STATEMENT OF ISSUE:

On June 2, 2000, Mr. Pat Tassone had a scheduled doctor's appointment with a heart specialist. Mr. Tassone had informed the Company of this appointment a month prior to the appointment both verbally and in writing to his immediate supervisor Mr. Rick Baxter. Mr. Baxter was again reminded of the appointment a week prior and the day before the appointment by Mr. Tassone.

The Union asserts Mr. Baxter on the morning of the appointment did not make any route adjustments to Mr. Tassone's route prior to him going on the road. The Union argues that this upset Mr. Tassone and put undue worry in his mind that he would not finish his assignment in time to attend his doctor's appointment.

The Union contends that the Company is aware of Mr. Tassone's past history when tension and pressure surmount on him. The Union further contends that the Company is aware that when pressure surmounts in Mr. Tassone, Mr. Tassone's behaviour may become irrational. The Union maintains that the Company put unwarranted pressure on Mr. Tassone, resulting in him panicking which triggered the events of his irrational behaviour in the afternoon of June 2, 2000. The Union further contends that the Company terminated the employment of Mr. Tassone while he was off due to injury awaiting approval of his claim with the WSIB.

FOR THE UNION:

(SGD.) D. NEALE
VICE-PRESIDENT / F.S.T.

FOR THE COMPANY:

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

There appeared on behalf of the Company:

M. D. Failes	– Counsel, Toronto
P. D. MacLeod	– Vice-President, Operations, Mississauga
A. Boodram	– Human Resources,
R. Baxter	– Supervisor,
R. Nolan	– Supervisor,
R. Alexander	– Dispatcher

And on behalf of the Union:

D. J. Dunster	– Staff Representative, Ottawa
D. Byfield	– Chief Steward,
P. Tassone	– Grievor

AWARD OF THE ARBITRATOR

Upon a review of the evidence the Arbitrator is satisfied the on June 2, 2000 the grievor, Driver-Representative Pat Tassone, did engage in conduct meriting a serious degree of discipline.

While certain of the evidence is in conflict, many of the facts pertinent to the grievance are not in dispute. The grievor had a doctor's appointment scheduled for 4:30 p.m. on June 2nd. It appears that the appointment was important, as the grievor suffered from a heart condition and was to see a cardiac specialist that afternoon. Mr. Tassone put the Company on substantial notice of his need to be free to attend the appointment at the end of the afternoon on the 2nd. The matter was also discussed with his supervisor, Mr. Richard Baxter, at the commencement of his tour of duty.

The evidence of Mr. Baxter, which the Arbitrator accepts as credible, is to the effect that on the morning of June 2nd he indicated to Mr. Tassone that he would himself help with pick-ups during the afternoon, and that Mr. Tassone should be able to complete all of his deliveries, as well as a small number of residential pick-ups before going to his medical appointment. I am satisfied that that was not an unreasonable expectation, given the volume of work and normal time required to cover the territory in question.

It does appear, however, that pressure may have mounted upon the grievor as the day progressed. Among other things he lost approximately one half hour of time at the commencement of the day because he was obliged to return to the terminal to replace a faulty scanner. It does not appear disputed that he worked through both of his coffee breaks as well as his lunch break.

At approximately 2:30 p.m. Mr. Baxter paged Mr. Tassone, who returned his call. The grievor then had fourteen parcels left to deliver, which prompted Mr. Baxter to state that he should have no problem completing those deliveries before returning to the terminal. It appears that at that point clear communication between the two deteriorated. Following the comment by Mr. Baxter, a relatively new supervisor to the grievor, Mr. Tassone made a comment that he would like to put him "up against the wall".

The evidence next reflects that the grievor proceeded to a relatively distant location to do a pick-up. In fact Mr. Baxter anticipated doing that same pick-up himself, although the grievor appears to have been under the impression that Mr. Baxter might not be aware that the business in question closed at 3:00 p.m. on Friday. It would appear that the trip to that location did add substantially to the grievor's working time. In fact Mr. Tassone completed his delivery rounds and returned to the terminal substantially later than he had originally wished. It appears that during the course of the late afternoon, anticipating that he might be late, Mr. Tassone had telephoned several people within the Company to complain about his situation, including Dispatcher Renford Alexander, Human Resources employee Annette Boodram and Supervisor Russ Nowlan. It is not clear what Mr. Nowlan knew of the grievor's circumstances, but it does appear that he instructed Mr. Tassone, at or about 4:10 p.m., that he must finish his four remaining stops before returning to the terminal.

The evidence confirms, beyond any substantial doubt, that upon returning to the terminal, at approximately 5:10 p.m., Mr. Tassone did engage in verbal abuse of Renford Alexander, at whom the grievor admits addressing at least one unacceptable racial slur, and Regional Manager John Coleman, to whom the grievor addressed threatening comments, prompting Mr. Coleman to call the local police.

In sum, the Arbitrator is satisfied that the grievor used unacceptable and abusive language with Ms. Annette Boodram, Mr. Renford Alexander, Mr. Baxter and Mr. Coleman. It appears to the Arbitrator that under the building stress of his own concern about being unable to make his appointment with the heart specialist the grievor "lost it" and lashed out in an unacceptable fashion at virtually anyone he perceived to be standing in the way of his late afternoon appointment with the heart specialist. The Union's representative submits, and the Arbitrator accepts, some of the pressure upon the grievor was that he then had forty demerits against his record, and was fearful of incurring any further discipline for not completing the work assigned to him. That does not, however, in the Arbitrator's view justify the clearly insubordinate, abusive and threatening tone adopted by Mr. Tassone in speaking to a number of individuals that afternoon. Mr. Tassone was in fact given every consideration by Mr. Baxter, and but for his own erratic conduct, including a time consuming and unnecessary pick-up, would have made his appointment with no difficulty. He could also have simply returned to the terminal at 3:45 p.m.

Standing alone the grievor's conduct was well deserving of discharge, given his prior disciplinary record. There are, however, mitigating circumstances which the Arbitrator considers important for the purposes of determining

whether it is appropriate to substitute a lesser penalty in the circumstances. It appears that on a prior occasion, in 1997, the grievor experienced a similar outburst of temper. Medical evidence then indicated that he was vulnerable in stressful situations, and he then was granted a leave of absence to undertake treatment for his condition. The record also discloses a further incident of insubordinate conduct on February 16, 2000 at the Company's terminal.

Mr. Tassone is an employee of fifteen years' service. While his actions during the course of the incidents of June 2, 2000 were clearly beyond the bounds of acceptable conduct, it does appear to the Arbitrator that the stress which he experienced with respect to the prospect of not making it to his scheduled appointment with the heart specialist, viewed in the light of his medically documented history of difficulty in coping with stress, may fairly be viewed as mitigating factors. It is clear, however, that supervisors and fellow employees should not, in the future, be required to suffer verbal abuse or threats from the grievor, under any circumstances.

In the Arbitrator's view the facts of the case justify a last chance formula, fashioned to give the grievor an opportunity to demonstrate rehabilitation, while protecting the interests of the Company. The Arbitrator therefore directs that the grievor be reinstated into his employment without loss of seniority, and without compensation. His reinstatement shall be conditional upon his accepting to provide written letters of apology, in a form acceptable to both the Company and the Union, to Ms. Boodram, Mr. Alexander, Mr. Baxter and Mr. Coleman. His reinstatement shall further be conditioned upon his accepting to be assessed for anger management counselling, either through the Company's EAP plan, if available, or otherwise at his own expense, and to undertake any anger management counselling which may be deemed to be appropriate. Should the grievor refuse or fail to abide by these conditions he shall be subject to immediate discharge. In addition, the period of time from the grievor's discharge to his reinstatement shall be recorded as a suspension, in substitution of the forty demerits assessed against him. He shall therefore return to work with his disciplinary record restored to the same position as prior to his termination.

October 13, 2000

(signed) MICHEL G. PICHER
ARBITRATOR