

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3204

Heard in Montreal, Wednesday, 11 July 2001

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Improper disqualification and judgement of student Locomotive Engineer Cathy Rezler resulting in resignation.

EX PARTE STATEMENT OF ISSUE:

Student Engineer Rezler was a successful candidate and entered training as a locomotive engineer with the implementation of NEPO. She was not given a reasonable length of time to qualify as a locomotive engineer. She was not placed with a regular crew or trainer for any meaningful length of time. Other candidates were given months longer on the job training than Ms. Rezler. She was the victim of sexist comments by a former officer during her training and was pressured to leave the training program to accept a lower paying position or a lay off/severance package.

She immediately filed a complaint with the B. of L.E. which in turn advised the Corporation. It was agreed to hold the case in abeyance in a separate category to follow the other training grievances.

The remedy sought is that Ms. Rezler be placed back into the training program and be given sufficient time to learn and apply the skills necessary to become a VIA Rail locomotive engineer and that she be made whole for all wages and benefits lost since forced to resign.

FOR THE BROTHERHOOD:

(SGD.) J. R. TOFFLEMIRE
GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

E. J. Houlihan	– Senior Manager, Labour Relations, Montreal
G. Benn	– Labour Relations Officer, Montreal
C. Harnish	– Manager, Customer Services, Montreal
M. Lavalée	– Manager, System Operations, Montreal

And on behalf of the Brotherhood:

J. Tofflemire	– General Chairman, Oakville
Ron Theriault	– Local Chairman, Ottawa
B. Colburn	– Observer
C. Rezler	– Grievor

AWARD OF THE ARBITRATOR

In considering the merits of this grievance the Arbitrator has considerable difficulty with the characterization of the facts as put forward in the Brotherhood's statement of issue. The evidence confirms that the grievor, who had previous employment with the Corporation as a Customer Service Attendant commencing in 1988 and as a conductor from 1992, was accepted into the locomotive engineer training program as part of the Corporation's NEPO initiative. The evidence discloses that following completion of the classroom instruction portion of the course, between August 17 and September 4, 1998 the grievor was assigned to training on the road commencing September 6, 1998. Her on the job training took place on the territory between Toronto and Ottawa, via Brockville.

The records filed by the Corporation establish, to the Arbitrator's satisfaction, that the two individuals set up as permanent trainers both came to have serious reservations about the progress being made by Ms. Rezler in late December of 1998. A notation made by one of them on November 1, 1998, Mr. R.G. Culver, includes the remark that the grievor "needs a lot more training. She relies on her instructor (OJT) too much". Contemporaneous evaluations by other locomotive engineers assigned to run with the grievor tend to show that her performance was generally below the "satisfactory" level. That is particularly shown in evaluations made by Locomotive Engineers R. Caron and C. Flaman. An evaluation of the grievor in mid-November by permanent trainer Tenke rates her performance as fair to poor and comments, in part "Cathy does not seem to comprehend what is involved in being a locomotive engineer. She has no feel for the speed and distance. Very poor judgement. She has to be coached through every little thing."

The only departure from the normal ratings of from fair to poor recorded in the grievor's progress report sheets are those of Locomotive Engineer C.D. Goodenough, whose rating of the grievor, in all categories and without variation, was "satisfactory". A later assessment made by trainer R.C. Culver on December 18 also noted the grievor as satisfactory, along with the comment "... she still has a ways to go." However, a second evaluation by trainer Tenke, apparently made on December 28, 1998, rates the grievor as fair to poor in most categories and states, in part: "Still shows no feel for speed and distance. She has not shown any improvement since last time, Nov-13-98." A further observation of the grievor's performance, made on December 30, 1998 by trainer Culver again evaluates the grievor in the fair to poor range and comments upon her appearing nervous and unsure of herself. His notes include the following:

I thought she was improving the last time I rode with her but this trip she doesn't seem to have improved at all. She will take a very long time to qualify, if she is capable of qualifying at all. It seems to be beyond her grasp. She is very inconsistent in her knowledge of the road, which after the length of time she has been there, doesn't instil confidence in her ability.

The next event concerns remarks made to the grievor at the conclusion of her trip on December 30. Also in the cab observing her performance was the Corporation's then Regional Operations Manager, Mr. J. Rousseau. Mr. Rousseau spoke with Ms. Rezler at the conclusion of the trip to tell her that she was not progressing well as compared with other trainees, and that she must understand that her training could not go on indefinitely. According to a letter of Mr. Rousseau, tabled in evidence, he indicated to her that if she did not show improvement in the weeks to follow the Corporation would have to look at whether she could continue in the program. The Brotherhood alleges that during the course of that same conversation Mr. Rousseau made remarks which were arguably sexist, including a suggestion that women of her generation were not sufficiently aggressive. According to the Brotherhood's submission, Mr. Rousseau also indicated that he had been sent by his own supervisor to take her out of the training program and offer her a job in on-board services.

To whatever extent there may be a conflict in the account of the grievor and that of Mr. Rousseau with respect to the content of that conversation, there is no dispute about what followed. In the week following December 30 Ms. Rezler telephoned Mr. Rousseau and advised that she wished to withdraw from the locomotive engineer training program. She was then offered and accepted a position in the OTS department and proceeded to train and to work for the next two months as a Service Manager in the corridor between January 12 and March 10, 1999. After that date she elected to take layoff/severance from the Corporation. It appears that she then also brought the instant grievance alleging that she had been effectively coerced out of the locomotive engineer training program.

A threshold question is whether the grievor was improperly forced out of the program by the Corporation, or whether she voluntarily withdrew from it. It is clear, notwithstanding the tone of the Brotherhood's statement, that she was never removed from the program by the Corporation, or given a shorter period of training than any other

individual. While that might have occurred if Mr. Rousseau's prediction had proved true, events never matured to that point. By the grievor's own account, after her discussions with Mr. Rousseau several days elapsed, after which she contacted him of her own initiative and indicated that she was withdrawing from the training program. In that circumstance it cannot be concluded that her decision was made hastily or in the heat of the moment. That perception is further borne out by the fact that there was no attempt by Ms. Rezler to protest her treatment by the Corporation in the training program, nor to bring any grievance against the evaluations made by the trainers or the comments, generally in the nature of a warning, offered by Mr. Rousseau. For reasons she best appreciates, the grievor then seemed to accept the view that she was not doing well in the training program, and was at risk of being removed if her lack of progress continued.

The grievor did not come to these events as a naïve or inexperienced employee. At the time of her withdrawal from the training program she had some nine years of service as an employee with the Corporation, six of which involved service in the not inconsiderable responsibilities of a train conductor, with some involvement in the training of other conductors. In that context Ms. Rezler must be viewed as a mature and experienced employee capable of making her own decisions, and equally capable of objecting to or grieving what she might consider as improper or unfair treatment by her supervisors.

On the balance of probabilities the Arbitrator is compelled to conclude, as substantiated in the evaluation records maintained over several months, that Ms. Rezler was experiencing difficulty becoming comfortable with the operating skills and duties of a locomotive engineer in high-speed passenger service. She was clearly put on notice by Mr. Rousseau in late December that she was not doing well, and absent any dramatic reversal would be at risk of being removed from the program. In that context she made a decision, in my view freely, to remove herself from locomotive engineer training. She could then have chosen to continue in the course, and if she felt that the Corporation was wrong in its assessment of her, to grieve any later attempt on the part of the Corporation to remove her from the training.

Most importantly, what occurred was a free and considered decision on her own part to leave the training course. Similarly, although the Brotherhood now suggests that the territory upon which she was assigned placed a greater burden upon her than that experienced by other trainees, there was no attempt on the grievor's part to object to that treatment at the time, whether by grievance or otherwise. In that context it must again be appreciated that as an individual with the operating experience of a conductor she would not have been unaware of different territorial circumstances. On the whole, therefore, the Arbitrator is compelled to conclude that the evidence does not support the suggestion of the Brotherhood that the grievor was effectively coerced out of the training program prematurely by the Corporation. On the contrary, the evidence clearly discloses that Ms. Rezler left the training program of her own accord, and indeed evidenced no intention to protest or grieve her treatment until such time as she left the service of the Corporation some two months later.

Applying the established jurisprudence, it is clear on the facts as disclosed that, for reasons she best appreciates, Ms. Rezler did decide voluntarily to leave the training course, and by accepting alternative employment with the Corporation in OTS Service Manager training and employment, followed a course of conduct which clearly demonstrated an objective manifestation of her intention. As noted above, this is not the case of an individual caught up in events on the spur of the moment or motivated by an emotional outburst or statement which they immediately or soon thereafter attempt to retract. (See **Re Sun Oil Co. Ltd. and Sun Oil Employees' Association** (1968), 19 L.A.C. 365 (Weiler); **Re S.C.M. Canada Ltd. and U.E.W., Local 914** (1964), 15 L.A.C. 332 (Reville) and a more general review of the jurisprudence in **Re Metropolitan Toronto Board of Commissioners of Police and Metropolitan Police Association** (1978), 18 L.A.C. (2d) 7 (Adams).)

For all of the foregoing reasons, the Arbitrator is compelled to the conclusion that the grievor voluntarily withdrew from the locomotive engineer training program, and that no violation of her rights on the part of the Corporation is disclosed. The foregoing conclusion makes it unnecessary to comment on certain of the ill-considered and allegedly sexist comments attributed to Mr. Rousseau, who is no longer a manager with the Corporation. The grievance must therefore be dismissed.

July 13, 2001

(signed) MICHEL G. PICHER
ARBITRATOR