

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3236

Heard in Montreal, Thursday, 10 January 2002

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (UNITED TRANSPORTATION UNION)

EX PARTE

DISPUTE:

Assessment of forty demerits to T.R. Price of Jasper, Alberta for conduct unbecoming an employee.

COUNCIL'S STATEMENT OF ISSUE:

Between April 17, 1999 and April 23, 2000, several time claims were submitted by Mr. Price which contained inappropriate remarks. Mr. Price was under considerable stress at the time, for which he sought counselling. Following the counselling sessions, these inappropriate remarks ceased.

The Company became aware of these remarks in August of 2000, several months after they had ceased. Mr. Price was required to provide an employee statement regarding this, during which he admitted his actions for which he was extremely remorseful. He further explained the stress he had been under and the positive effects counselling had had for him.

Mr. Price was assessed forty demerits for conduct unbecoming an employee following the investigation.

The Union contends that the Company has failed to recognize Mr. Price's fragile mental state at the time, the positive effect of his counselling, or his involvement with the EFAP program as mitigating factors. As such, the Union submits that if discipline is even warranted forty demerits is excessive and the substitution of a lesser penalty is justified.

The Company disagrees.

FOR THE COUNCIL:

(SGD.) R. HACKL

FOR: GENERAL CHAIRPERSON

There appeared on behalf of the Company:

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| R. Reny | – Human Resources Associate. Vancouver |
| D. Coughlin | – Consultant |
| D. Erickson | – Assistant Manger, CMC, Edmonton |
| S. Macdougald | – Manager, Labour Relations, Montreal |
| R. Morissette | – Manager Operating Practices – Champlain |

And on behalf of the Council:

R. Hackl	– Vice-General Chairperson, Edmonton
B. R. Boechler	– Vice-General Chairperson, Edmonton
B. J. Henry	– General Chairperson, Edmonton
R. Thompson	– Local Chairperson, Jasper
T. G. Carroll	– Local Chairperson, Jasper

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that for approximately a year, between April 17, 1999 and April 23, 2000, Conductor T.R. Price of Jasper, Alberta recorded erratic, silly and sometimes disrespectful comments while entering his time claims on the Company's CATS computer system. For example, on May 10, 1999 he entered:

“Train in track six. Rollby, reg. CATS, rest, go home, eat sleep and dream of living in wealth and good health with a fabulous babe.”

On at least five occasions during the period in question Mr. Price registered comments clearly disrespectful of the Company's two highest executive officers, and the wife of one of them. For the most part, however, Mr. Price's entries were cryptic ramblings with little meaning to anyone but himself. For example, on December 6, 1999 he entered:

“Radio free litigation. The shareholders must be informed 10 mins radio time.”

It is common ground that in the normal course these comments would, in all likelihood, have been seen by no one. The entering of time claims on the CATS system is done in accordance with an honour system, and the entries of employees are not reviewed on a regular basis. The Company does, however, conduct periodic audits of employees' CATS time claims. It was during the course of such an audit that the grievor's statements were discovered. Based on the record so uncovered, following a disciplinary investigation, the Company assessed forty demerits against the grievor's record.

Upon a review of the totality of the evidence the Arbitrator is persuaded that there are substantial mitigating factors which come to bear in the case at hand. Firstly, on their face the comments made by Mr. Price reflect what can only be construed as the irrational utterings of a troubled person. Indeed, the record discloses that the offensive entries ceased some four months before the audit which discovered them. The audit, conducted in late August of 2000 did not discover any abusive comments after April of the same year. In the result, at the time of the disciplinary investigation the conduct which was the subject of the Company's inquiry had ceased for some time.

The grievor's explanation, supported by medical documentation, is that he had suffered severe personal problems and sought counselling, as a result of which his recording of inappropriate remarks in his time claims had ceased. Documentary evidence tendered in support of the grievance confirms that in May through July of 2000 Mr. Price received ongoing counselling from psychologist Garry Last. During the course of the disciplinary investigation it also emerged that the grievor had met with Doctor Rudd of the Company on September 1, 2000.

The grievor is forty-two years of age and has worked for the Company for twenty years. In all of that time he has received discipline on only one occasion, some ten years ago in relation to a rules violation. From the standpoint of mitigation, therefore, his record brings both long and good service to bear.

In the Arbitrator's view the assessment of forty demerits is disproportionate to the facts disclosed. The comments which Mr. Price registered were clearly inappropriate and might, absent mitigating circumstances, have justified discipline to the point of discharge. However, for the purposes of discipline in the instant case they must be viewed within their context. Firstly, they were made within a medium which, in all likelihood, would result in their not being read by anyone other than the grievor. Secondly, they were an apparent aberration in an otherwise good employee. Significantly, that deviant behaviour was confined to a precise period, and ceased once Mr. Price, on his own initiative, sought and obtained counselling for his own problem of personal stress. Additionally, during the course of the Company's investigation the grievor apologized and expressed what the Arbitrator accepts to be genuine remorse. All of those factors, in addition to the grievor's excellent prior record, suggest that a substantially lower degree of discipline would have been appropriate in the circumstances.

The Arbitrator therefore reduces the discipline assessed against Mr. Price to the level of ten demerits, with his record to be corrected accordingly.

January 16, 2002

(signed) MICHEL G. PICHER
ARBITRATOR