

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3259

Heard in Calgary, Wednesday, 15 May 2002

concerning

CANADIAN PACIFIC RAILWAY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (UNITED TRANSPORTATION UNION)

DISPUTE:

Assessment of 30 demerits to Yard Foreman F.D. Terlecki of Winnipeg, Manitoba.

JOINT STATEMENT OF ISSUE:

Following an investigation, Yard Foreman F.D. Terlecki was issued a Form 104 informing him that his record had been assessed thirty (30) demerits for:

“Improper and unacceptable conduct, as evidenced by your repeated use of inappropriate and offence comments demeaning the Company Supervisor: at the South Hump on February 25, 1997, in a letter you sent to Transport Canada dated February 28, 1997, and the investigations conducted July 8, 11, 1997 and November 7, 1997 at Winnipeg, Manitoba”.

The Council contends that Yard Foreman Terlecki did not receive a fair and impartial investigation as provided for in Article 32 of the collective agreement. In addition, the Council contends that the Company has breached confidentiality requirements in assessing discipline. For these reasons, the Council contends that the discipline assessed Yard Foreman Terlecki should be removed. In the alternative the Council contends that there was no just cause for the discipline and in the alternative, that the penalty of 30 demerits was too severe in all of the circumstances.

The Company notes a procedural flaw in the grievance procedure. The Company has denied the Council's requests.

FOR THE COUNCIL:

(SGD.) D. H. FINNISON
FOR: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) D. FREEBORN
FOR: GENERAL MANAGER OPERATIONS

There appeared on behalf of the Company:

G. Wilson	– Counsel, Calgary
D. Freeborn	– Labour Relations Officer, Calgary
F. Devine	– Manager Operations, Winnipeg
D. Winiski	– Director Operations, NMC, Calgary
D. Cooke	– Manager, Labour Relations, Calgary
S. Seeney	– Manager, Labour Relations, Calgary
D. Guerin	– Labour Relations Officer, Calgary
C. Graham	– Labour Relations Officer, Calgary

And on behalf of the Council:

M. Church	– Counsel, Toronto
D. Finnon	– Vice-General Chairperson, Calgary
F. Ridgen	– Local Chairperson, Winnipeg
F. D. Terlecki	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator discloses that the grievor believed that he was being harassed by a supervisor, who shall be referred to as “H”. On February 28, 1997 the grievor wrote a letter to Transport Canada, copied to the Company’s District General Manager, complaining of what he characterized as “harassment in the workplace, sexual or otherwise”. The letter contains an extraordinary list of personal insults of the most excessive kind. Some of the milder references to the supervisor contained in that letter are “...a termagant woman ... repulsive and unattractive ... a big momma with a big mouth ... the domineering iron maiden ... a testy dominatrix ... a swagger belly...”.

At other times, including during the disciplinary investigation conducted by the Company which resulted in the assessment of thirty demerits against Mr. Terlecki, he further referred the supervisor in question as “a slave driver, inarticulate, indecisive, audacious, reckless, presumptuous, discourteous, disrespectful, stubborn, nonsensical, picky, too fastidious, unprofessional, uncouth, uncivilized, a blustering bully, abusive, arrogant, aggressive, unladylike, overbearing, offensive, rude and insolent.” There is no suggestion in the record that the grievor considers such communication, whether written or verbal, to be inappropriate or deserving of any concern on the part of his employer, or for that matter of other employees.

In 1995 this Office heard an earlier grievance involving Mr. Terlecki. On that occasion he was denied a return to work following a compensable injury, pending the Company’s requirement that he undertake a psychiatric examination. As the award in **CROA 2608** records, as early as 1986 Mr. Terlecki, whose name was then Florison, referred to an assistant superintendent as being involved in a “... delinquent display of moral turpitude” and accused the supervisor of using intimidation tactics causing emotional stress deleterious to his health. He accused another supervisor of “maliciously maligning my reputation directly or by insinuation or irony in words.”

The award in **CROA 2608** reflects that difficulties arose between the grievor and other employees in the mid 1990s, as reflected in the following passage:

The sequence of events leading to the instant grievance appears to have originated in February of 1993. The grievor alleged that he had been threatened by a fellow employee on February 11, 1993, during a meeting held to discuss his complaint about employees smoking in the workplace. A formal investigation was conducted by the Company at Winnipeg in relation to that allegation on March 1, 1993. Although the record is not complete in respect of the triggering incident, it would appear that tension evolved between the grievor and other employees by reason of his complaints about employees smoking in the South Hump area of the Winnipeg Yard. The record of what transpired in relation to the smoking incident investigation need not be elaborated here. Suffice it to say that it is a case study in pettiness gone out of control. Mr. Florison is plainly not one given to the arts of conciliation, and the record includes a memorandum from the grievor characterizing the conduct of others with the use of such words as "contrivance, misrepresentation, misleading sin of omission, commission of false statements, conspiracy, connivance and vile act of moral turpitude". He demonstrates no restraint from inflicting insult at a personal level. Mr. Florison came to refer to the meeting of February 11, 1993, called to discuss the smoking problem in General Yardmaster Zeglinski’s office, as the "Ziegfeld Follies". On a later occasion, he referred to a letter written by Superintendent Hedden dated April 1, 1993 as the "April Fools’ Day letter".

After an exhaustive review of the facts, recognizing “... the Company had every reason to be concerned about the grievor’s propensity for confrontation in his relations with his supervisors and fellow employees”, the Arbitrator concluded that the Company could not require a psychiatric examination as a condition of Mr. Terlecki’s reinstatement into employment. On that basis the grievor was then reinstated into his employment with full compensation for wages and benefits lost.

This Office has substantial concern for his continued tendency to inflict insult and personal injury upon other persons. In the case at hand, there is, quite simply, not a shred of mitigating evidence to explain or excuse the grievor's abuse, both written and verbal, of his supervisor. On the whole, the Arbitrator finds the assessment of thirty demerits in the circumstances of this case to be a relatively mild form of discipline. Given the grievor's history, his outright discharge might well have been justified in the circumstances.

The Arbitrator cannot find, as the Council asserts, any violation of the grievor's procedural entitlements under article 32 of the collective agreement, governing the disciplinary investigation. While it appears that the Company did indicate that the documents used in the investigation would be held in a confidential manner, there was no undertaking on its part that confidentiality would be tantamount to an immunity from discipline. Nor would the Arbitrator give great substance to the technical objection to the grievance raised by the Company with respect to whether the grievance was filed in a manner that was not timely. Given the disposition of the case on the merits, it is unnecessary to deal with that issue. If it had been necessary, I would, on the basis of my discretion under the **Canada Labour Code**, have allowed the grievance to proceed notwithstanding the failure of time limits.

For all of the foregoing reasons the grievance is dismissed.

May 21, 2002

(signed) MICHEL G. PICHER
ARBITRATOR