

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3437

Heard in Edmonton, Tuesday, 13 July 2004

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Assessment of a written reprimand to Mark Gibson regarding his tour of duty on September 22, 2003.

UNION'S STATEMENT OF ISSUE:

Mark Gibson was working as assistant conductor on the 601 assignment out of Edmonton on September 22, 2003. The assignment primarily switches the Dow Chemical plant at Scotford, Alberta.

During the tour of duty in question, Mr. Gibson was followed and observed by General Supervisor Shula for approximately four (4) hours from 11:30 to 15:30.

During this period of time Mr. Shula observed several incidents he later referred to as rule violations. Mr. Shula made no mention of any of these apparent rule violations as they occurred, instead allowing Mr. Gibson to continue working without bringing them to his attention.

Only after completion of the work at Scotford did Mr. Shula mention and counsel Mr. Gibson regarding these infractions. A second counselling session took place upon the crew's return to Edmonton. Even after these two counselling sessions, the Company required an employee investigation and assessed Mr. Gibson with a written reprimand regarding this tour of duty.

The Union contends that Mr. Gibson had already been disciplined through the two counselling sessions and the assessment of a written reprimand amounts to him being disciplined twice for the same incident. Additionally, the Company's failure to bring these

violations to Mr. Gibson' attention at the time of their occurrence was, at best, negligent behaviour on the part of the Company and contrary to their obligations as an employer. The Union requests that the written reprimand be expunged.

The Company disagrees.

FOR THE UNION:

(SGD.) R. A. HACKL

FOR: GENERAL CHAIRPERSON

There appeared on behalf of the Company:

- D. Brodie – Manager, Labour Relations, Edmonton
- R. Reny – Sr. Manager, Human Resources, Edmonton
- J. Hunder – Counsel, Edmonton
- T. Brown – Superintendent, Edmonton
- R. Shulha – Account Manager, Edmonton

And on behalf of the Union:

- D. Ellickson – Counsel, Toronto
- R. A. Hackl – Vice-General Chairperson, Edmonton
- J. W. Armstrong – Vice-President, UTU-Canada, Edmonton
- Wm. Witwicky – Vice-Local Chairperson, Kamloops
- M. Gibson – Grievor

AWARD OF THE ARBITRATOR

Upon a review of the evidence the Arbitrator is satisfied that the position of the Union cannot be sustained. The evidence discloses that during the course of his tour of duty on September 22, 2003 the grievor engaged in a number of practices which were not proper, albeit they were relatively minor. He was given a verbal counselling with respect to them at the conclusion of his tour of duty by General Supervisor, Operations Rob Shulha and, following an investigation, was assessed a written reprimand.

In the Arbitrator's view the Company was fully entitled to proceed to an investigation in the circumstances. A verbal counselling is not, for the purposes of an

employee's record under this collective agreement, properly characterized as discipline. It is not a measure which can be grieved and the fact that a verbal counselling may be followed by the more serious step of a disciplinary investigation and a written reprimand does not constitute double jeopardy.

As to the merits of the incident the Arbitrator is satisfied that the Company was entitled to resort to a written reprimand given what appears to have been the undisputed fact that the grievor did, in several respects, engage in certain irregular practices in the handling of his assignment on that day. Nor was the delay in counselling him tantamount to negligence or condonation, given that he was being assessed on an overall basis, and clearly did not act in such a way as to create any obvious immediate peril.

For all of the foregoing reasons the grievance must be dismissed.

July 20, 2004

(signed) MICHEL G. PICHER
ARBITRATOR