

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION**

**CASE NO. 3454**

Heard in Calgary, Tuesday, 9 November 2004

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE  
(RAIL CANADA TRAFFIC CONTROLLERS)**

**DISPUTE:**

The dismissal of former Rail Traffic Controller Ms. Melanie Hladun, PIN 15775.

**JOINT STATEMENT OF ISSUE:**

On January 30, 2004, Ms. Melanie Hladun attended a formal investigation into her failure to protect the issuance of GBO 8658 – Form Y Protection to Train M30051-27 on the Edson Subdivision while working as a Rail Traffic Controller on January 28, 2004.

On February 29, 2004 the Union advanced a grievance claiming that the discipline was excessive and that the Company had violated Ms. Hladun's due process and right to a fair and impartial hearing. The Union requests that Ms. Hladun be returned to serviced with full seniority and compensated for all lost wages and benefits.

The Company asserts that Ms. Hladun's dismissal was warranted and appropriate, under the circumstances and in light of her previous discipline record.

**FOR THE UNION:**

**(SGD.) J. RUDDICK**  
**GENERAL CHAIRMAN**

**FOR THE COMPANY:**

**(SGD.) D. VEENIS**  
**MANAGER LABOUR RELATIONS**

There appeared on behalf of the Company:

- D. Veenis – Manager, Labour Relations, Toronto
- A. Nashman – General Manager – Transportation, Western Region
- D. Marchand – Manager, Rail Traffic Control (RTC Traffic Centre)

And on behalf of the Union:

- J. Ruddick – General Chairman, Burlington
- S. Brownlee – Local Chairwoman, Edmonton
- M. Hladun – Grievor

### **AWARD OF THE ARBITRATOR**

The grievor is forty years old and started working with the Company in March of 1982 at the age of nineteen in Edmonton, Alberta. She was initially hired as an operator (now referred to as a Rail Traffic Controller Level 4). The grievor was accepted in 1988 in the Rail Traffic Control program and had been working as a regular Rail Traffic Controller (RTC) since 1990. As with all other employees in her position, the grievor underwent an extended period of familiarization where she was assigned to work with experienced RTC's. The grievor also underwent rules training and desk familiarization training on an ongoing basis through her years of service.

The main responsibilities of an RTC are to ensure the safe movement of trains within specific assigned territories. That requires clear and concise directions to all operating crews. The rail traffic controller must also react to unsafe conditions within her territory and take the appropriate measures to protect both the public and railway crews from potential danger. A summary of the duties of a rail traffic controller is set out succinctly in the Company's brief at page 9:

Briefly stated, a rail traffic controller is a critical position that is charged with the responsibility to coordinate all on rail activities and issue necessary clearances or authorities to ensure the safe passage of trains or other railway equipment. This affects and involves operating train crews and other railway personnel, travelling by rail under the operating instructions of those clearances and authorities. The rail traffic controller is required to make critical operational decisions as well as interpret and apply the rules and their instructions properly, on an ongoing uninterrupted basis with minimal supervision.

The incident which led to the grievor's discharge occurred on January 28, 2004 and arose out of the issuance of a Rule 42 (Form Y) confirmation to Foreman Greenbank. Foreman Greenbank was working between 8:30 and 16:30 with a crew on the track between mile 59 and mile 63.2 on the Edson Subdivision. Under Rule 42, train crews must establish contact with the foreman named on the General Bulletin Order (GBO) and obtain instructions from the foreman before operating through the area identified in the GBO. As noted in Rule 42: "... the foreman's instructions to the train or engine must be identical to the routing arrangement with the RTC." A failure in communication between the foreman and the train crew could potentially put the on-track personnel in danger.

Before issuing the Rule 42 confirmation to Foreman Greenbank, the grievor was prompted by the GBO system that three trains did not have the Rule 42 GBO advising them that Foreman Greenbank was going to be occupying the track between mile 59 and mile 63.2. This safety prompt cautioned the grievor to check on the location of the three trains operating in the Edson subdivision. The grievor properly accepted two of the prompts involving eastbound traffic but failed to properly act on the third prompt involving Train M30551-27, which was not safely past the work site. Train M30551-27 in

the end managed to stop at the red flag marking the start of Foreman Greenbank's work crew limits. The grievor's mistake, in the company's view, was to issue the Rule 42 confirmation to Foreman Greenbank without first taking steps to prevent trains from entering the territory where Foreman Greenbank was working or until she issued the GBO to the train crew advising of Foreman Greenbank's work limits in the Edson subdivision.

The grievor provided her formal employee statement on January 30, 2004. The grievor admitted that she breached the rules and RTC manual items alleged by the company. The grievor also admitted that she failed to report the incident to her supervisor as required by CROR General Rule 'A'. In that regard, she stated the following:

Q 17 Ms. Hladun, after issuing GBO 8658 to train M30551-27, did you immediately advise your Supervisor of this serious violation of CROR Rules and RTC Manual Procedure?

A 17 No.

Q 18 Ms. Hladun, why not?

A 18 It did not occur to me to bring this incident to the attention of my supervisor. I issued the GBO and carried on with my duties as it was extremely busy. I was behind, the phone was ringing off the hook and radio towers were stacked up.

The company submits that the grievor's failure to properly apply Rule 42 protection could have had disastrous results. In that regard, the company noted that Foreman Greenbank and six employees under his care were working on a bridge span some 183 feet in length at mile 61.2 of the subdivision. The safety hand rails and

walkways had been removed from the bridge in conjunction with the maintenance work being performed. The bridge crosses the Yellowhead Highway, a four lane road with heavy vehicular traffic.

The Company also takes the position that, given the grievor's record, the dismissal was fully warranted under the circumstances. Apart from the incident of January 28, 2004, which the company characterizes as a culminating incident, the employer alleges some eight other incidents of discipline leading to her termination. The company noted that the grievor's record indicates that a number of those incidents were similar in nature to the current offence in the sense that inattention, distractions or lack of concentration led to mistakes.

The company noted that the grievor had failed on May 26, 2003 to comply with basis rules and regulations by overriding a critical safety prompt, which in turn, in that instance, placed the foreman and his employees in grave danger. The company viewed that offence as warranting dismissal. The grievor and the company on that occasion entered into a Leniency Reinstatement Agreement which states that the grievor had committed serious rule violations since June 19, 2000. The grievor agreed to serve a 21 day suspension. The company notes that the grievor's most recent offence of January 28, 2004, was a cardinal rule violation. Under the circumstances, the employer believes the grievor has been allowed every opportunity to improve her performance but has failed to live up to the stringent requirements of her position as an RTC. Notwithstanding

the grievor's long service, the employer believes she can no longer be trusted in her position.

The Union alleges that the grievor was not allowed a right to a fair and impartial hearing. It notes that the Notice to Appear for her investigation was served one day after the incident on January 29, 2004. The notice also advised the grievor that the investigation would commence the following day, January 30, 2004 – only two days after the incident. Less than three days after the investigation, on February 2, 2004, the grievor was terminated. Accordingly, less than five days elapsed from the date of the incident to the termination of an otherwise dedicated employee with over twenty-two years with the Company. The Union also asserts that it is only within the last few years that the grievor's work habits deteriorated.

The Union also referred to a letter from the grievor's physician dated October 22, 2004 wherein she was diagnosed with a major depressive disorder as a result of a "marital /intrafamily problem which has been chronically stressful." The letter goes on to state that the grievor was now fit for resumption of employment and there is no cognitive deficit remaining as a result of her acute depressive illness. The Union seeks the full reinstatement of the grievor to her rail traffic controller position with full seniority and that she be made whole for all lost wages and benefits; or alternatively, reinstatement on terms the Arbitrator deems appropriate.

The expectations of an RTC are high. RTCs must be able to work under pressure and deal with emergent circumstances from one moment to the next while on duty. Distractions such as radio calls do not excuse the RTC from monitoring her assigned rail traffic. The grievor does not diminish the consequences of her actions. She acknowledged in her interview that her inadvertence could have had dramatic consequences to the Company. I note the following acknowledgement from her investigation in that regard:

**Q 21** Ms. Hladun, do you realize that had train 305 entered the limits of Foreman Greenbank's Rule 42 without authority, there was potential for disaster including the loss of life and damage to Company and Public property.

**A 21** Yes

The arbitrator notes the pattern of procedural breaches over the years, particularly in the last few years. Of great concern are the two most recent breaches resulting from the grievor's failure to react appropriately when prompted to do so. The consequences of grievor's inadvertence could have been disastrous, as she herself has acknowledged. The July 23, 2003 incident resulted in the Leniency Reinstatement Agreement and a suspension of twenty-one days. At that point, the grievor knew or should have known that she was under the watchful eye of the Company and had to execute her duties with great care and attention. She could no longer afford any distractions. The company notes that the grievor even told the General Manager, Mr. Nashman, how she would change her pattern upon her return to work after the July 23, 2003 incident and that she understood the importance of safety in her role as an RTC. Mr. Nashman also commented during these proceedings that he, on numerous

occasions, tried to coach the grievor when difficulties arose. He pointed to an infraction which occurred on December 12, 2003 wherein rules were violated where the employer elected to coach the grievor rather than apply any formal discipline-even in the face of the Leniency Reinstatement Agreement. Rather than terminate the grievor on the basis of a breach of the Leniency Reinstatement Agreement, the Company attempted, as it had in the past, to rectify the grievor's ongoing concentration problems through advice and direction. Unfortunately, despite the numerous efforts of the company and the imposition of corrective discipline, the grievor has been unable to demonstrate a pattern of reliability. As a result, in my view, the grievor can no longer be trusted to perform the important duties the Company has assigned to her as an RTC. In that regard, the Arbitrator notes the following comment at **Ad Hoc Case No. 332**:

The position of the Company is succinctly stated under item 47 of its brief as follows:

The Company has an obligation to its employees and to the public to ensure that those employees charged with the responsibilities of a Rail Traffic Controller are competent and reliable and that they remain so at all times. Mr. Berard's negligence and indefensible behaviour on November 9, 1992, breached the fundamental trust of bond between the Company and employee necessary to ensure that compliance with rules and regulations will be strictly adhered to, now and in the future. He has been disciplined and educated in the past, but to no avail. We cannot take another chance that his next failure prove fatal.

We must not put our employees and the general public at risk.

The Arbitrator can take issue neither with this reasoning nor the approach which the Company adopted. The Grievor's past record when appreciated in association with the incident calls into question his capacity to meet the high standard of responsibility that the position of Rail Traffic Controller demands and which the Company is entitled to expect. ***It is true that Mr. Berard did accumulate almost fourteen years of service with the Company but it does not follow that by reason of such lengthy service the Company should be obliged to maintain him in a position where, by reason of his conduct, he***



***has placed into question his capacity to meet the standard of responsibility inherent in that position.***

(emphasis added)

The Union submits that the grievor has demonstrated a medical disability which the employer must now accommodate. The basis for the Union's argument is a letter from her physician dated October 22, 2004. The letter describes a major depressive disorder as a result of marital/intra-family problems. The letter later goes on to state that the grievor is fit for resuming any form of employment suited to her education and experience. Apart from the fact that the employer was not informed of the grievor's medical condition during her employment with the Company, I have difficulty reaching a conclusion on the basis of this one recent medical letter that there is a causal connection between her shortcomings while on duty and the depressive disorder documented by her physician some ten months after her termination. In order to reach that conclusion, I would require further and more timely medical documentation which establishes the link between her medical disorder and her inability to properly concentrate on her duties. The medical letter actually appears to support a clearer causal link between her depression and the effects of losing her job. Finally, I have difficulty accepting that the grievor is now prepared to resume employment after suffering a major depressive disorder. Again, I would require further and more timely medical documentation to accept that conclusion.

I would also add that I do not accept the Union's submission that the employer breached its duty of fairness in dealing with the grievor in the final incident which led to

her dismissal. There is no evidence that the grievor complained of any alleged hastiness in which the interview was arranged or the discipline meted out. Her responses at the interview also do not indicate any concern over the manner in which the employer approached the investigation or; for that matter, is there any further evidence that the company was unfair in the way it interviewed the grievor. Overall, I find no basis to support the argument that the grievor did not receive a fair and impartial investigation or that the employer prejudged this matter and ignored mitigating factors.

Although the grievor has long service with the employer, she has been unable to live up to the expectations of an employee holding an RTC position with this company. She has been provided with several chances, particularly in recent years, to improve her performance but unfortunately has made repeated errors, including cardinal rule violations, which, but for the other systems in place, could have had endangered the safety of other company employees and the public. The result is that the grievor can no longer be trusted to perform to the high standards the company expects of an RTC. On that basis, and for all the above reasons, the grievance is dismissed.

November 16, 2004

**(signed) J. M. MOREAU, Q.C.**  
ARBITRATOR