

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

CASE NO. 3522

Heard in Calgary, Tuesday, 8 November 2005

concerning

CANADIAN PACIFIC RAILWAY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of dismissal of Mr. Paul J. Huxley on July 20, 2004 for failure to meet your employment obligations in a safe and competent manner.

JOINT STATEMENT OF ISSUE:

On July 20, 2004, Mr. Huxley received a Form 104 dismissing him on account of "your failure to meet your employment obligations in a safe and competent manner as evidenced by your: lack of ability to retain information; continued unsafe work habits; poor radio communications; numerous violations of the operating rules including moving cars with handbrakes applied; entraining and detraining moving tank cars; running when kicking cars; and kicking cars at an excessive rate of speed, between February 2nd, 2004 to July 8, 2004, at Lethbridge, Alberta."

The Union's position is that the dismissal of Mr. Huxley is far too severe and excessive a penalty in these circumstances. Progressive discipline was not practiced by the Company. The Union submits that Mr. Huxley was not provided with sufficient training by the Company during his period of employment. In particular, the Union submits that Mr. Huxley did not receive an effective training plan, nor did he receive sufficient instruction, education and/or training assistance.

It is the Union's position that Mr. Huxley was at all relevant times eager to learn, and in spite of the lack of formal training assistance from the Company, Mr. Huxley was an employee who gratefully accepted any additional form of instruction offered to him. The Union submits that Mr. Huxley's level of education and ability to learn is such that, had he been provided

appropriate training from the Company, he would have improved and have met the Company's expectations.

In the alternative, since the Company relies upon an alleged meeting of July 8, 2004, the Union submits that the Company knew or reasonably should have known that Mr. Huxley was not fit to work on the July 8th, 2004 tour of duty. On July 8, 2004, the Union Local Chairman strenuously objected to the actions of the Company on this basis, and therefore the Company had an obligation to take a more accommodating approach. The Union submits that the Company failed to properly accommodate Mr. Huxley in these circumstances.

It is the Union's position that the Company's disciplinary proceedings against Mr. Huxley have breached the provisions in the Collective Agreement regarding investigation and discipline, for reasons including the following. The Union submits that the Company improperly relied on hearsay evidence against Mr. Huxley during its Investigation. As well, the Union submits that the Company failed to put Mr. Huxley on proper notice that the Company was relying upon evidence of his familiarity trips in May through to July 2004 as part of an evidence-gathering about his work abilities. The Union submits that prior to July 8, 2004, Mr. Huxley was not properly informed that his employment was in jeopardy. The Union submits that Mr. Huxley was not given fair notice to prepare for the July 8, 2004 evaluation. Moreover, the Company's evaluation improperly proceeded in spite of the Union Local Chairman's objections.

The Union seeks an order that the Grievor be reinstated without loss of seniority and upon such other terms as the Arbitrator deems appropriate. The Union also seeks compensation for all lost wages from July 8, 2004.

The Company disagrees with the Union's position. The Company's position is that the dismissal of Mr. Huxley on July 20, 2004 is appropriate and justified in the circumstances. The Company believes that Mr. Huxley's work habits were the subject of numerous concerns from Company supervisors and fellow employees. The Company believes that it provided Mr. Huxley with proper instruction, ample training and familiarization opportunities, and that the Company is not responsible for Mr. Huxley's inability to meet its performance standards.

The Company's position is that it did not act arbitrarily, discriminatorily or in bad faith towards Mr. Huxley.

The Company does not believe that the facts as a whole warrant the reinstatement of the Grievor under any circumstances, and therefore denies the Union's request.

FOR THE UNION:

(SGD.) D. FINNISON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. HAMPEL
FOR: GENERAL MANAGER

There appeared on behalf of the Company:

C. Ayton	– Labour Relations Officer, Calgary
J. Copping	– Director, Labour Relations, Calgary
P. Marotta	– Road Manager
D. Day	– Witness
G. Squires	– Witness

And on behalf of the Union:

D. Ellickson	– Counsel, Toronto
D. Finnon	– General Chairperson, Calgary
D. Able	– General Chairperson, Calgary
D. Olson	– Vice-General Chairperson, Calgary
A. Singer	– Vice-General Chairperson, Cranbrook
G. Crawford	– Local Chairperson, Lethbridge
R. A. Hackl	– Vice-General Chairperson, CN Lines West, Edmonton
P. J. Huxley	– Grievor

AWARD OF THE ARBITRATOR

The record before the Arbitrator confirms that after a considerable period of employment the grievor demonstrated serious deficiencies in his work. Those deficiencies led the Company to the conclusion that he did not have the capacity to perform the work of a conductor.

If the evidence were confined to the performance evaluations of Mr. Huxley, without regard to any mitigating factors, the Arbitrator would be inclined to sustain the Company's view. There are, however, mitigating factors which cannot be ignored. Principal among them is that the Company is unable to produce records which would confirm the proper and systematic training of Mr. Huxley in the duties and responsibilities of a conductor. It does not appear disputed that, due in part to a rail traffic controllers' strike at the time of the grievor's initial training period, some degree of departure from normal standards may have resulted. It is not disputed that the reports normally prepared by mentoring employees for the group of employees being trained at the time went entirely missing. In other words, the Company cannot confirm that the

grievor did receive systematic and complete training and feedback at the time of his initial orientation. Moreover, the evidence indicates that when he transferred from Calgary to Lethbridge, for a period of days he was mentored by Darren Day. The evidence of Mr. Day confirms that the grievor was plainly unfamiliar with a number of switching procedures, in particular the "kicking" of cars during moving switches. Mr. Day expressed the view that Mr. Huxley did improve his performance during the four tours of duty they worked together.

On the whole, while there is some merit to the grievance, the Arbitrator is not persuaded that the grievor should simply be reinstated into his employment unconditionally. It is difficult to dismiss out of hand the Company's concerns about Mr. Huxley's questionable work performance over of a relatively extended period of time. On the other hand, the suggestion of the Union that the employer's failure to properly train the grievor at the outset cannot be dismissed either.

How then is this matter to be resolved? In the Arbitrator's view the appropriate outcome should be fashioned with a view to the protection of the legitimate interests of both parties, and without undue cost to the Company. The Arbitrator therefore directs that the grievor be reinstated into his employment, without compensation or benefits, and without loss of seniority. The Arbitrator further directs that the grievor be reinstated to the position of a new hire, to be given the full training to which a newly hired employee would be entitled and subjected. That, at a minimum, will give the grievor a fair opportunity to demonstrate whether he can perform safely and productively, while

protecting the Company's right to ensure that Mr. Huxley is able to discharge the duties and responsibilities of a conductor when and if he is so assigned in the future. Should there be any dispute between the parties concerning the implementation of these directions the matter may be spoken to.

November 14, 2005

(signed) MICHEL G. PICHER
ARBITRATOR