

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 3553**

Heard in Montreal Tuesday, 9 May 2006

concerning

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

and

UNITED TRANSPORTATION UNION

DISPUTE:

The discipline assessed Motor Coach Operator Don White which resulted in his discharge for the accumulation of demerits.

JOINT STATEMENT OF ISSUE:

On January 11, 2006, Motor Coach Operator Mr. Don White was notified that he was dismissed for the accumulation of 85 demerit marks.

The Union grieved the dismissal contending that Mr. White's involvement in the Kapuskasing incident October 30, 2005 and in the Timmins incident also on October 30, 2005, was not deserving of demerits and therefore the demerits assessed should be removed and Mr. White should be reinstated with compensation for time lost.

The Company denied the grievance.

FOR THE UNION:

(SGD.) P. KONING
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) S. CARMICHAEL
PRESIDENT, ONTC

There appeared on behalf of the Company:

G. W. Zabarelo	– Manager, Labour Relations, North Bay
C. Sutton	– Vice-President Passenger Service, North Bay
R. Lapointe	– Director Motor Coach Services, North Bay

And on behalf of the Union:

P. Koning	– General Chairperson, North Bay
J. Corley	– Local Chairperson – Rail
R. Larabie	– Local Chairperson – Motor Coach

D. White

– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that on two occasions during the course of his tour of duty on October 30, 2005 the grievor, Motor Coach Operator Don White, did violate the code which governs the conduct of coach operators in their relations with the public and with fellow employees. The sole issue is the appropriate measure of discipline in all of the circumstances.

The first incident occurred at or about 5:20 a.m. on October 30, 2005, in Kapuskasing. It appears that the grievor found his coach being held up by reason of an individual who was having some difficulty getting a ticket processed. When Mr. White attended at the ticket agent's desk and became aware of the problem he stated, within earshot of others, that the individual should get back on his bus and that they could have the matter taken care of at Cochrane "... where people knew what they were doing". There can be little doubt but that the comment was demeaning to the ticket agent, as plainly reflected in a letter of complaint which she subsequently wrote with respect to the incident.

The second incident took place later the same day at Timmins. It appears that upon arrival at the Timmins station Mr. White was advised that there would be a bus switch, something about which he had not previously been informed. The person who

advised him, Mr. Luc Johnson, who was also a motor coach operator, was met with a relatively hostile reaction. It does not appear disputed that Mr. White threw his cell phone onto the dashboard of his bus and said "This is bullshit!", thereupon leaving the scene which required Mr. Johnson to deal alone with handling the passengers. Subsequently Mr Johnson wrote a letter to the grievor, which he copied to the Company, indicating his concern at the incident and his own fear that the incident might have resulted in a coming to blows. In a subsequent letter to the Company, dated November 10, 2005, Mr. Johnson indicated that he had received a sincere apology from Mr. White and that he considered the matter to be behind them.

The Company's representative submits that in the circumstances the assessment of demerits leading to a total of eighty-five was not inappropriate. At the time of both incidents the grievor had an outstanding record of forty-five demerits, as a result of an incident involving a physical altercation with another employee on or about January 30, 2005. That resulted in the assessment of forty-five demerits and an unpaid leave of absence of four months, during which the grievor pursued anger management. It is not disputed that anger management counselling has been an ongoing process for Mr. White.

The Arbitrator can readily appreciate the perspective of the Company. The first obligation of any employer is to ensure a safe and civil workplace, where employees need not fear for their own safety or for verbal assaults to their personal dignity. It was

therefore not inappropriate for the employer to view the incidents of October 30, 2005 with great seriousness.

There are, however, mitigating factors to be considered. Firstly, it does not appear disputed that the assessment of forty-five demerits for the incident in January of 2005 was the first ever discipline registered against Mr. White over some nine years of service. The Arbitrator also considers it meaningful that the grievor did register an apology to Mr. Johnson and has, of his own volition, apparently continued anger management counselling to the present time. While these factors do not excuse Mr. White's conduct, they do bear consideration in respect of fashioning an appropriate disciplinary response. In the Arbitrator's view the interests of both parties are sufficiently served if the grievor is returned to his employment, without compensation, it being understood that the period from his termination until his reinstatement shall be registered as a suspension for the offences described in the Form 200 issued by the Company. The grievor should return to work with his demerits to stand at such position as they would have but for the assessment of any additional demerits for the two incidents of October 30, 2005.

The Arbitrator therefore directs that the grievor be reinstated on the terms described above, without compensation for any wages and benefits lost, and without loss of seniority. Mr. White must appreciate that this award is in the nature of a last chance opportunity, and that any further recidivism in respect of interpersonal

behavioural infractions will have the most serious of consequences. Should there be any dispute with respect to the interpretation or implementation of this award, the matter may be spoken to.

May 15, 2006

(signed) MICHEL G. PICHER
ARBITRATOR