

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

**CASE NO. 3563**

Heard in Montreal, Tuesday, 13 June 2006

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE  
RAIL CANADA TRAFFIC CONTROLLERS**

**DISPUTE:**

The dismissal of former Rail Traffic Controller Mr. Ed. Gatt.

**JOINT STATEMENT OF ISSUE:**

Mr. Ed Gatt was dismissed from the Company's service effective December 1, 2005.

This matter was grieved by the Union by letter dated February 8, 2006.

It is the Union's position that the discipline was excessive and discriminatory, and that the Company had violated Mr. Gatt's due process and right to a fair and impartial hearing. The Union requests that Mr. Gatt be returned to service with full seniority and compensated for all lost wages and benefits.

The Company asserts that Mr. Gatt's dismissal was warranted and appropriate under the circumstances.

**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
R. J. Zimmerman	– General Superintendent, Regional Operations, Toronto
P. J. Orr	– Manager, RTCC, Toronto
P. J. Lavoie	– Manager, Corridor Operations, Toronto

And on behalf of the Union:

- J. R. Ruddick – General Chairman, Burlington
- S. Brownlee – Vice-General Chairwoman, Edmonton
- M. Boucher – Local Chairman, Montreal
- J. McKoy – Vice-Local Chairman, London
- E. Gatt – Grievor

### **AWARD OF THE ARBITRATOR**

The grievor was discharged December 19, 2005. The main argument advanced by the Employer is based on the doctrine of a culminating incident. In the instant case the Employer takes the position that it had just cause to discharge the grievor as a result of two incidents, both of which took place November 30, 2005. Those two incidents, of themselves, in the normal course of events, would not have warranted discharge but, coupled with the grievor's prior discipline record, argues the Employer, there are grounds for discharge.

The Union argues that the events themselves were not sufficiently proved to warrant discipline but, in any event, do not warrant discharge. It also submits that the Employer was out to "get" the grievor as demonstrated by what it calls a highly prejudicial memorandum written by a Company manager about the second incident. Finally, it argues that a Notice to Appear for the investigation of one of the incidents fails to include one of the reasons for the discharge, as indicated on the Form 780.

The first question to be determined is whether the Employer is correct in considering this matter to fall within the culminating incident doctrine. After considering the evidence, the Arbitrator finds it does not. For that doctrine to apply there must be a past record of discipline such that the last, or culminating, incident is the proverbial last straw that broke the camel's back. In the instant case the past disciplinary record necessary to trigger the doctrine does not exist. The Employer provided a litany of events in support of its position. However, there are three reasons why, notwithstanding such a list, the doctrine does not apply. First, the Form 780 under "Active Discipline" has only one notation, a deferred suspension. Under "Total Active Discipline", there are two notations: the aforementioned deferred suspension and the instant discharge. The Arbitrator is unable to conclude from the Form 780 that there is a past disciplinary record that would normally trigger the culminating incident doctrine. (See, e.g., **3314**, **3454** and **3511**.)

Second, the Employer relies on a series of events from December 17, 2003 to the time of the events giving rise to the discharge. However, at the hearing, the Employer acknowledged that, except for the one event resulting in the deferred suspension, none of the other incidents resulted in formal discipline. If they were not discipline the events can not be used by the Employer to fashion a previous disciplinary record.

Third, the Employer relies on a series of events and disciplinary actions from December 1982 until August 4, 2000. These events all took place more than five years

before the two alleged incidents which limits their value as a past disciplinary record. As well, they all themselves culminated in a discharge in August 2000, subsequently resolved by the parties through a tri-party formal Return to Work Contract.

Having found the doctrine of culminating incident does not apply, each incident must be looked at independently to see if discipline is warranted and, if so, what the appropriate level of discipline is.

In dealing with the first incident, the grievor is accused of conduct unbecoming in relation to a confrontation with a fellow RTC. During the investigation, the grievor was candid about what he had said and done, acknowledging that he had acted improperly. He indicated that he acted as he did as a "spontaneous reaction based on an unjust accusation" by a fellow employee, Mr. Brankley. He further acknowledged that Mr. Brankley, the other RTC involved, did not deserve the way he spoke to him. He expressed his intention to apologize to Mr. Brankley and agreed that the added pressure he put on Mr. Brankley during the shift was unnecessary and unwarranted.

For his part, during the investigation, Mr. Brankley acknowledged that, whereas it hadn't been his intention, a remark which he made to the grievor about the latter sleeping in his chair could be viewed as provocation.

The incident warrants discipline. Although it is at least arguable that the grievor was provoked, he over-reacted to the situation and his over-reaction put undue stress on Mr. Brankley in a safety sensitive position. While not formally disciplined about unprofessional behaviour, at least since December 2003, the grievor has definitely been coached about such behaviour. This must be taken into consideration, along with, of course, his acknowledgement of wrongdoing and offer to apologize.

The second incident alleges a failure to properly perform the duties of an RTC in not providing operating authority to Signal Technician Meeks at Bethnal East for no apparent reason. The grievor was also accused of unacceptable behaviour in a radio communication with Mr. Meeks. It is the latter that the Union states should be struck as it was not part of the original Notice to Appear. Whether that is the case or not, the Arbitrator finds no substance to this part of the Employer's allegation after hearing a tape of the radio communication between the two. There was nothing rude and belligerent as suggested by the Employer.

With respect to the principal allegation, the Arbitrator is satisfied, based on the evidence, that the grievor could have handled the situation in a better and more professional manner. At no time was there any danger to Mr. Meeks, or anyone else, but he should have been more pro-active after the 30 minutes he had given to Mr. Meeks to conduct the code unit test had expired. In the view of the Arbitrator although there was no urgency to call Mr. Meeks, prudence would have suggested a call well before the approach of Train No. 300.

As a result of this, discipline is warranted.

Although discipline is warranted for the two incidents neither one is serious. Together do they warrant discharge? In the first incident, there was some degree of provocation by Mr. Brankley, and an acknowledgement of wrongdoing and an offer of apology on the part of the grievor.

In the second incident, there was never any danger.

Indeed, the grievor was vigilant at least to the extent to make sure that would be no issue with Train 300. Also to be considered is an acknowledgement by Mr. Vernon, S&C Supervisor, in an email sent to Pierre Arsenault that Mr. Meeks was not entirely blameless in the whole sequence of events :

I am extremely sorry to waste everyone's time with this, however I believe that this is yet again another example of the problems we face daily on the YX desk. This tape documents an exchange which occurred yesterday, between S&C technician Jeff Meeks and RTC Ed Gatt. When Jeff first cancels his time he asks for the use of the code bucket at Bethnal (he does not specify west or east end, Jeff's fault). After which end he wants gets sorted out the RTC tells him to call back after #2 goes by. ...

With respect to the first incident, as an RTC, the grievor has a duty to act in a particularly cautious and non-belligerent manner and not to add more stress to the already stressful environment. His actions towards Mr. Brankley, even though

somewhat provoked, were not called for. His actions, when considered with the coaching he had received, warrant a one month suspension.

For the second incident, the Arbitrator believes a one month suspension is also warranted. He could have handled the situation differently and should have done so, given the potential, at least, for an issue arising at Bethnal East. In determining that a one month suspension, as opposed to a longer suspension, is appropriate, the Arbitrator has also considered Mr. Vernon's e-mail and the impression left by it that there may no longer be, on the part of the Employer, an objective consideration of the grievor's behaviour or performance.

On the other hand, the amount of coaching received by the grievor has not been insignificant and the grievor must understand that although he is being reinstated he is not being held blameless and clear attitude adjustments on his part are required or discharge in the future might well be justified.

The discharge is rescinded and a two month suspension without pay, but without loss of service or seniority is substituted. The record of the employee is to be amended to reflect the above. The grievor is to be reinstated forthwith to the position held by him immediately prior to his discharge. He is to be made whole for the period between the end of the two month suspension and his return to work.

The Arbitrator remains seized to deal with any issues arising from the interpretation or implementation of this award.

June 16, 2006

**(signed) M. BRIAN KELLER**  
ARBITRATOR