# CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

# CASE NO. 3569

Heard in Edmonton, Tuesday, 11 July 2006

concerning

## CANADIAN NATIONAL RAILWAY COMPANY

and

## UNITED TRANSPORTATION UNION

**DISPUTE:**

Assessment of a thirty (30) day suspension to James Carroll of Edmonton, AB, for conduct unbecoming an employee March 29, 2000.

**JOINT STATEMENT OF ISSUE:**

On March 29, 2000 Yard Conductor James Carroll was approached by a transportation supervisor during his shift for the purpose of discussing circumstances related to his tour of duty. The ensuing conversation included the use of profanities.

Following the completion of the shift, Yard Conductor Carroll was required to provide an employee statement with respect to his behaviour. Yard Conductor Carroll was assessed a thirty day suspension as a result of his conduct towards a Company officer.

It is the Union's contention that the Company disregarded several mitigating factors in assessing this discipline and in declining the grievance.

The Union submits that these mitigating factors must be taken into consideration and that any discipline assessed, if in fact any is warranted, by substantially reduced to reflect same.

The Company disagrees that there were any mitigating factors to be considered and submits the discipline was warranted and justified.

| FOR THE UNION: | FOR THE COMPANY: |
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| (SGD.) R. A. HACKL | (SGD.) K. MORRIS |
| FOR: GENERAL CHAIRMAN | MANAGER, LABOUR RELATIONS |

There appeared on behalf of the Company:

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| K. Morris | – Manager, Labour Relations, Edmonton |
| B. Laidlaw | – Manager, Labour Relations, Winnipeg |
| P. Payne | – Manager, Labour Relations, Edmonton |
| D. Crossan | – Manager, Labour Relations, Toronto |

And on behalf of the Union:

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| R. A. Hackl | – Vice-General Chairperson, Edmonton |
| M. A. Church | – Counsel, Toronto |
| R. Thompson | – Local Chairperson, Jasper |
| S. Hartley | – Local Chairperson, Edmonton |
| B. Larsom | – Vice-Local Chairperson, Edmonton |
| J. Carroll | – Grievor |

**AWARD OF THE ARBITRATOR**

The record reveals, without substantial controversy, that the grievor spoke to his supervisor in an extremely profane and disrespectful manner on March 29, 2000. While the grievor was in the course of his tour of duty as yard conductor on the 0755 Clover Bar yard assignment, he was approached by Transportation Supervisor Tom Otteson who inquired about the state of the work being performed and, among other things, asked why the crew had taken a late lunch. The Arbitrator is satisfied that at that point the grievor responded: "I'm not fucking talking to you. The last time I talked to you I almost got fired, so fuck off." When Supervisor Otteson attempted to explain that he was entitled to make inquiries as to the work being done, the grievor further responded: "I'm tired of your stupid fucking questions and I don't want to fucking talk to you." At that point Mr. Carroll walked away from Mr. Otteson, essentially refusing to speak with him.

Following an ensuing investigation the grievor was assessed a thirty day suspension for "conduct unbecoming of an employee". While the Union challenged the conduct of the investigation at the arbitration hearing, that issue is not raised in the joint statement of issue and is therefore not properly before me.

The Arbitrator is satisfied that in the circumstances the Company had just cause to assess discipline against Mr. Carroll. Whatever his opinion of Mr. Otteson, and whatever may have transpired between them in the past, Mr. Carroll could not cloak himself with those events to essentially deny the supervisory authority of Mr. Otteson and engage in open defiance and disrespect towards him. The issue then becomes the appropriate measure of discipline in all of the circumstances.

The Union brings to the Arbitrator's attention the fact that some two years prior to the incident giving rise to this grievance there had been a petition signed in the workplace protesting the management style of Mr. Otteson. The petition, tendered in evidence, indicates that more than forty employees informed higher management that Mr. Otteson's management style was confrontational, threatening and intimidating towards employees at the Edmonton Terminal. The petition also indicates that he commonly swore at employees in a manner that was unacceptable and destroyed the self esteem of employees on the job. It appears that Mr. Otteson has since left the employment of the Company. The Arbitrator has little doubt of the truth of the events which may have motivated the petition some two years prior to the incident which concerns us. I am nevertheless left with some doubt as to what significant weight those events can have with respect to the actions of Mr. Carroll, and the overt disrespect which he showed to Mr. Otteson on March 29, 2000, some two years later.

There is, however, another mitigating factor which does bear some weight with respect to the appropriate quantum of discipline. The evidence before me confirms that not long before the incident giving rise to this discipline, Mr. Otteson had apparently

instructed crews switching out the Imperial Oil plant in the Edmonton yard in a manner contrary to the CROR, directing them to remain on the ground when switching a certain number of cars, rather than riding on the point of their movement. When an incident occurred in January of 2000, involving a collision with a CP Rail movement, it appears that the employment of Mr. Carroll was put into serious question until higher management was made aware of the improper instruction which had been given by Mr. Otteson, something which it appears he had denied. That is the root of Mr. Carroll's assertion that Mr. Otteson had got him into trouble.

That background does give some context to the concern which Mr. Carroll may have felt when approached by Mr. Otteson at the same location, the Imperial Oil plant in Edmonton yard, on March 29, 2000. Relatively fresh from the experience of January, Mr. Carroll may well have felt a degree of anger, if not provocation, by the very presence of Mr. Otteson. Certainly the events of January would explain his reference to the transportation supervisor having nearly cost him his job.

Even accepting those facts, however, I am satisfied that Mr. Carroll could not refuse to answer questions properly put to him by his supervisor, nor could he revert to the level of profane and disrespectful language which he used. For better or for worse, Mr. Otteson was his assigned supervisor and he was obligated to deal with him in a civil and respectful manner.

There are other mitigating factors to weigh in the balance. At the time of the incident the grievor had thirty-five demerits outstanding on his record. A review of his disciplinary record, dating back to 1993, however, indicates no prior discipline for insubordination towards management or the disrespectful treatment of fellow employees. On the whole, these factors must be borne in mind when assessing the appropriate measure of discipline.

In all of the circumstances the Arbitrator is satisfied that a suspension for a period of five working days would have been sufficient to bring home to the grievor the importance of being respectful to his supervisor. Given his prior record and the history of his relationship with Mr. Otteson, a mitigating factor discussed above, I must conclude that the assessment of a full one month suspension was unduly punitive in the circumstances.

The grievance is therefore allowed in part. The Arbitrator directs that the grievor's record be amended to reflect a suspension of five working days, with the grievor to be compensated for the difference in wages and benefits lost.

July 14, 2006

**(signed) MICHEL G. PICHER**
**ARBITRATOR**