

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

**CASE NO. 3640**

Heard in Montreal, Wednesday, 9 January 2008

Concerning

**VIA RAIL CANADA INC.**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

45 demerit marks assessed to Jack Strachan.

**JOINT STATEMENT OF ISSUE:**

The TCRC submits that on June 21st, 2006 Locomotive Engineer Jack Strachan was working train 42 between Toronto and Ottawa. VIA Manager Tom Tenke was riding the locomotive and participated in several discussions with Mr. Strachan some of which became heated. Manager Tenke removed Locomotive Engineer Strachan from service at Oshawa and the Corporation subsequently disciplined the grievor.

During Locomotive Engineer Strachan's hearing, the Corporation relied upon a letter from Manager Tenke as the sole piece of evidence. However, Mr. Tenke did not attend nor was Locomotive Engineer Strachan's co-worker called in to verify what actually occurred. The TCRC grieved the discipline citing that both parties were drawn to the level of questionable conduct yet 100% of the blame was assessed to the grievor.

The Corporation submits that Mr. Strachan's conduct was unbecoming and insubordinate. At one point, Mr. Strachan left the controls while the train was still moving and he stepped behind the engineer's seat. Mr. Tenke had to take over the control of the train. After failing to heed several requests to calm down Mr. Strachan was removed from service at Oshawa.

An investigation was held on June 26, 2006. Mr. Strachan was subsequently assessed 45 demerits for conduct unbecoming, gross misconduct and insubordination, violation of CROR General Rule A(ix) and (xi) and unsafe operation of the train while working as locomotive engineer on train 42 between Toronto and Oshawa on June 21, 2006.

The Corporation submits that considering all the circumstances the discipline was warranted and appropriate.

**FOR THE UNION:**

**(SGD.) J. R. TOFFLEMIRE**  
**GENERAL CHAIRMAN**

**FOR THE CORPORATION:**

**(SGD.) A. RICHARD**  
**SENIOR ADVISOR, LABOUR RELATIONS**

There appeared on behalf of the Corporation:

A. Richard	- Sr. Advisor, Labour Relations, Montreal
T. Tenke	- Manager, Train Operations (Central)
D. Stroka	- Sr. Advisor, Labour Relations, Montreal
J. Rondeau	- Agent, Labour Relations, Montreal

And on behalf of the Union:

J. Tofflemire	- General Chairman (ret'd), Stratford
R. Dyon	- General Chairman, Laval
Wm. Michael	- Local Chairman, Toronto
J. Strachan	- Grievor

## AWARD OF THE ARBITRATOR

Upon a review of the evidence the Arbitrator is satisfied that Locomotive Engineer Strachan clearly behaved in a manner which was disrespectful and insubordinate. The unchallenged evidence confirms that during the operation of Train 42 between Toronto and Oshawa on June 21, 2006, while accompanied in the cab of his locomotive by VIA Manager Tom Tenke, Mr. Strachan engaged in a continuous stream of invective and disrespectful language aimed at the Corporation and its supervisors. The grievor's tirade culminated when he rose from the seat where he was stationed, operating the locomotive, and stood behind that position, effectively leaving the locomotive without anyone at the controls, save for the ability of the second engineer to engage the emergency brake. Faced with that situation Manager Tenke, who is a qualified locomotive engineer, moved into the grievor's seat and took over the operation of the locomotive, remaining at the controls until the train reached Oshawa Station. It appears that the manager remained in the operating position notwithstanding shouted comments by Mr. Strachan stating "Get the fuck out of my seat."

At Oshawa Mr. Tenke informed the Operations Control Centre of the situation which had developed. It appears that he offered Mr. Strachan a last chance to calm down and resume operating his train, failing which he would be removed from service. When the grievor resumed his stream of profanities and abuse towards Mr. Tenke the manager removed the grievor from service and Mr. Tenke, along with the second engineer, operated the train to its destination of Ottawa. Following an investigation held on June 28, 2006, the grievor was assessed forty-five demerits for conduct unbecoming an employee, gross misconduct and insubordination, and the violation of CROR General Rule A(ix) and (xi), as well as the unsafe operation of his train.

The Union objects to the fact that during the course of the disciplinary investigation Mr. Tenke was not present to be questioned by the Union's representative. In effect, the Union notes, the Corporation assessed the discipline against the grievor based entirely on the written report of Mr. Tenke, a copy of which was provided to the grievor and his Union representative at the commencement of the investigation.

The Arbitrator cannot sustain the Union's position with respect to the conduct of the investigation. Moreover, the record is devoid on any request on the part of the Union to have Mr. Tenke attend and be questioned. (**CROA 2920 and 2934**) The Union appeared content to proceed based on the documentary report of Mr. Tenke. Nor can the Union succeed on its objection to the fact that Locomotive Engineer Black was not called to contribute to the inquiry. Again, there was no request on the part of the Union to have Mr. Black make a statement as part of the investigation nor, it may be noted, did the Union choose to bring the second locomotive engineer to the arbitration hearing to shed any contrary light on the Corporation's characterization of the grievor's actions. On the whole, in these circumstances, there is no violation of the collective agreement disclosed.

Unfortunately, where the account of events provided by Mr. Strachan at his investigation and the report of Mr. Tenke differ, the Arbitrator is compelled to prefer the statement of Mr. Tenke. The records of this Office disclose that Mr. Strachan has displayed a tendency of being less than candid and open in his dealings with his employer (**CROA 3189**).

What, then, does the record disclose? Clearly, Mr. Strachan engaged in a sustained course of insulting and abusive language directed at the Corporation and its managers, clearly intended to be heard by Manager Tom Tenke, who was in the cab of the grievor's locomotive on the day in question. A troubling aspect of the case at hand is that it appears to be the second occasion on which Mr. Strachan has shown a propensity to allow conversation about matters unrelated to the operation of his train to distract him while he is at the controls. As reflected in **CROA 3189**, which involved the grievor's prior discharge and resulted in his reinstatement subject to a suspension and restriction to yard service, Mr. Strachan allowed his passenger train to proceed at extremely high speed through a cross-over while distracted in conversation with his in-charge locomotive engineer. In the instant case, to allow his anger to get the better of him, to the point of abandoning his operating seat and the controls of a locomotive, is clearly an unacceptable course of conduct. So too is the level of disrespect which he addressed towards the Corporation in the presence of its manager, Mr. Tenke. I am satisfied that all of the heads of offence contained in the notice of discipline communicated to the grievor are fully established.

Are there any mitigating factors to consider? It appears that there is one. For reasons which he best appreciates, Manager Tenke did not verbally correct Mr. Strachan or redress him at an early point during his outbursts, so as to put him on notice that his conduct was unacceptable and should immediately stop. Unfortunately, it appears that the manager tolerated what was clearly unacceptable conduct for a substantial period of time as the grievor's train progressed on its path between Toronto and Oshawa. Had Mr. Tenke been more firm in his dealings with Mr. Strachan it is not unreasonable to expect that the situation might have been brought under control much sooner, and

indeed might not have gotten out of control. In the Arbitrator's view that is a factor to be taken into account in determining the appropriate measure of discipline.

For all of the foregoing reasons the Arbitrator is satisfied that a reduction of the discipline to the level of thirty demerits, taking into account the apparent tolerance demonstrated by the Corporation's manager in the face of the grievor's conduct, is an appropriate measure of discipline in all of the circumstances. The grievance is therefore allowed, in part. The Arbitrator directs that thirty demerits be substituted for the discipline registered against Mr. Strachan for the events of June 21, 2006.

January 14, 2008

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