

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

CASE NO. 3641

Heard in Montreal, Thursday, 10 January 2008

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL
WORKERS UNION OF CANADA (CAW-CANADA)**

DISPUTE:

Concerning the suspension assessed Mr. Chic for alleged insubordination towards a Company officer and then (10) demerits assessed for failing to properly wear his safety glasses in the Winnipeg Intermodal Terminal garage on May 9, 2007.

JOINT STATEMENT OF ISSUE:

On May 15, 2007, a statement was taken from Mr. Chic pursuant to article 23.2 of the collective agreement concerning his alleged insubordination to a Company officer and failure to properly wear safety glasses inside the intermodal garage on May 9, 2007. Mr. Chic was assessed with a suspension from May 9, 2007 to May 16, 2007 for alleged insubordination and ten (10) demerits for failing to properly wear his safety glasses.

The Union appealed the Company's decision arguing that while failing to wear proper PPE is a disciplinable offence, there were circumstances that should have mitigated the discipline assessed. The Union further argued that there was no proof of insubordination and the discipline assessed regarding insubordination was unwarranted and if warranted excessive in the extreme.

The Company denies the Union's contentions and claims.

FOR THE UNION:

(SGD.) D. OLSHEWSKI
NATIONAL REPRESENTATIVE

FOR THE COMPANY:

(SGD.) R. CAMPBELL
LABOUR RELATIONS

There appeared on behalf of the Company:

R. Campbell	– Manager, Labour Relations, Winnipeg
D. S. Fisher	– Director, Labour Relations, Montreal
D. W. Head	– Operations Officer, Winnipeg
J. S. Lempa	– Trainmaster, Winnipeg

And on behalf of the Union:

D. Olszewski	– National Representative, Winnipeg
R. Fitzgerald	– President, Council 4000, Toronto
R. Chic	– Grievor

AWARD OF THE ARBITRATOR

On a close review of the materials the Arbitrator must conclude that the grievor did fail to comply with the requirement to properly wear protective eye glasses while working in the intermodal garage. He was observed both working in the cab of a crane and moving about near the crane and on the garage floor while his glasses were propped on his forehead.

The grievor's explanation with respect to that event is that he had difficulty reading the small print of certain wire designation codes located under the dashboard of the crane, partly by reason of the scuffed condition of his eyewear and the distortion which they caused. Even accepting that explanation, the Arbitrator must agree with the submission of the Company that it was then incumbent upon Mr. Chic to advise his immediate supervisor of that situation and obtain permission, if necessary, to briefly remove his eye protection or, alternatively, to be issued new protective glasses which would not have a distorting or impeding effect. It was, in other words, not within the grievor's own prerogative to simply ignore the requirement to keep his eyewear protection in place at all times. On that basis I am satisfied that the assessment of ten demerits for the failure to observe the rule in question is within the appropriate range of discipline.

I have considerably greater difficulty with the Company's decision to suspend Mr. Chic. That was effected by removing Mr. Chic from service on the day of the incident, May 9, 2007 and keeping him out of service until May 16, 2007, for alleged insubordination.

The grievor's removal from service appears to have been triggered by his conversation with Trainmaster Jason Lempa, the person who observed Mr. Chic working in violation of the rule concerning the wearing of safety glasses. It appears that Mr. Lempa was entirely unknown to the grievor, being a trainmaster from Chicago who was assigned to the Winnipeg facility to, in effect, inspect and audit the safety performance of the employees at that location. The Arbitrator accepts the unchallenged evidence of Mr. Chic that he had never been given to understand who Mr. Lempa was or why he was in the workplace. His own first impression appears to have been that Mr. Lempa was in all likelihood an owner-operator truck driver or an external contractor who was incidentally present in the facility.

The evidence reveals that when Mr. Lempa confronted the grievor, accusing him of not having his eye wear properly in place Mr. Chic responded, in part, that he had observed Mr. Lempa in an area outside the garage which requires hard hats, when Mr. Lempa was not wearing a hard hat. It would seem that it was shortly after that exchange that Mr. Lempa directed that Mr. Chic be taken out of service. He persisted in that course notwithstanding that Mr. Chic, apparently realizing that Mr. Lempa was a person in authority, attempted on two occasions to apologize to him.

The grievor is an employee of good record, having received only five demerits in some fifteen years of service. For fourteen years he has been the Health & Safety representative of his shop, and is said to have exercised a positive leadership role over the years with respect to safety in the facility. On what responsible basis, therefore, should it be concluded that the only appropriate measure of response to his mistaken exchange with Mr. Lempa was to immediately remove him from service, and to effectively impose upon him a one week suspension and the resulting loss of earnings? It becomes difficult to see the justification for that measure when, as I am satisfied, the grievor did not know, and had no reason to know, that the person speaking to him about the positioning of his safety glasses was a supervisor specifically charged with monitoring safety practices in the facility. Nor, on the whole, does the evidence suggest that the grievor was overtly disrespectful, much less insulting, in his responses to Mr. Lempa.

As a general rule, the removal from service of an employee, without the benefit of an investigation or disciplinary hearing, is an appropriate measure where the individual is involved in conduct which calls into question his or her ability to work without some unacceptable threat to operations or general productivity. For example, the discovery of a person who is uncontrollably insubordinate in a verbal way, is involved in violence, is intoxicated or who is engaged in a theft, might well justify resort to that extraordinary measure. It is far from clear to the Arbitrator, however, that the actions of Mr. Chic, even accepting that he made a negative comment to Mr. Lempa about his own safety practices, was such as to justify his summary removal from the workplace, and the eventual loss of a week's earnings. There is indeed no reason to doubt that the grievor, being properly apprised of who Mr. Lempa was, would have corrected his behaviour and posed no further problem. That, in fact, would appear from the grievor's own efforts to apologize to Mr. Lempa as he became aware of who he was.

For the foregoing reason the grievance is allowed in part. The Arbitrator directs that the ten demerits assessed against the grievor be allowed to stand. He shall, however, be compensated for all wages and benefits lost in respect of his suspension, with all reference to the suspension to be struck from his disciplinary record.

January 14, 2008

(signed) MICHEL G. PICHER
ARBITRATOR