

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

CASE NO. 3649

Heard in Calgary, Tuesday, March 11, 2008

Concerning

CANADIAN PACIFIC RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Appeal of the Caution issued ... to [Employee X] for “initiating radio communications and interrupting the ongoing communications between the crew members on Train 177 and a Company Officer when there was no emergency situation; for using inappropriate and improper language during the course of your radio communications with Company Supervisors, ...”.

COMPANY’S STATEMENT OF ISSUE:

The Union’s position is that [Employee X] should not have received discipline and should not have been withheld from service. The Union further contends that the Company’s conduct towards [Employee X] in connection with this matter and its assessment of discipline is a breach of the Company’s Harassment & Discrimination Policy.

The Union requests that the discipline assessed to [Employee X] be removed in its entirety, and that he be made whole for time held out of service.

The Company’ denies the Union’s request.

UNION’S STATEMENT OF ISSUE:

On March 12, 2005, numerous employees including [Employee X] and various Company officers were using radio communications. [Employee X] finished his tour of duty but was later advised that he was being held from service due to concerns about his fitness to operate his train. The Union contends that [Employee X] was improperly held from service for ten and one half days in extreme violation of article 23 of the collective agreement. It is the Union’s position that there were no grounds for discipline in the circumstances. It is further the Union’s position that the grievor’s use of the radio on March 12, 2005 was no more culpable than any of his co-workers or managers. The Union contends that the Company’s disciplinary action is discriminatory and disproportionate, given that no other employees and Company officers engaged in radio communications received discipline. [Employee X] was forthcoming and cooperative in his investigation. The Union contends that statements made by the Company in its grievance response improperly raised new grounds of discipline which were not subject to the investigation, nor properly made subject of disciplinary action. [sic] By denying the grievor opportunity to fully respond to allegations for which he was assessed discipline, the investigation was unfair and biased and the discipline is null and void. The Union contends that the Company’s conduct towards [Employee X] in connection with this matter and its assessment of discipline breach the Company’s Harassment & Discrimination Policy as well as the *Canadian Human Rights Act*.

The Union requests that the discipline assessed against [Employee X] be removed in its entirety, and that he be made whole with interest.

The Company denies the Union’s request.

FOR THE UNION:
(SGD.) D. R. ABLE
GENERAL CHAIRMAN

FOR THE COMPANY
(SGD.) C. AYOT
FOR: ASSISTANT VICE-PRESIDENT, OPERATIONS WEST

There appeared on behalf of the Company [among others] :

- C. Ayton – Labour Relations Officer, Calgary
- R. Wilson – Assistant Vice-President, Industrial Relations, Calgary
- R. Hampel – Counsel

And on behalf of the Union [among others] :

- M. Church – Counsel, Toronto
- D. Able – General Chairman, Calgary
- Employee X – Grievor

At the request of the parties the hearing was adjourned. By letter dated 30 September 2008, the parties advised the Office that the matter had been resolved.