

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

CASE NO. 3670

Heard in Montreal, Thursday, 10 April 2008

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the assessment of 30 demerits to Conductor Wally Geiler effective May 25, 2007.

JOINT STATEMENT OF ISSUE:

On May 25, 2007, Conductor Geiler was assessed 30 demerits for allegedly “failing to conduct yourself in a professional manner as evidenced by the harassing and intimidating comments directed toward a Transport Canada Railway Operations Inspector, May 3, 2007, while employed as a Conductor at Brandon, MB; a violation of CROR General Rule A (ix).”

The Union contends that the investigation was not conducted in a fair and impartial manner per the requirements of the collective agreement. For this reason the Union contends that the discipline is null and void.

The Union further contends that there is no cause for discipline in the circumstances or, in the alternative, that the penalty is excessive. In addition, the Union contends that the assessment of discipline violates Article 94 of the *Canada Labour Code*.

The Union requests that the discipline be removed entirely from Conductor Geiler’s record and that Conductor Geiler be made whole for any losses incurred as a result of this discipline. In the alternative, the Union requests that the penalty be mitigated as the arbitrator sees fit.

The Company disagrees and denies the Union’s request.

FOR THE UNION:

(SGD.) D. OLSON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) A. AZIM
FOR: ASSISTANT VICE-PRESIDENT

There appeared on behalf of the Company:

J. Dorais	– Labour Relations Officer, Calgary
R. Hampel	– Legal Counsel
A. Azim	– Manager, Labour Relations, Calgary
B. Thiebe	– Manager Operations, Coquitlam

And on behalf of the Union:

K. Stuebing	– Counsel, Toronto
D. Olson	– General Chairman, Calgary
T. Smith	– Local Chairman,
W. Geiler	– Grievor

AWARD OF THE ARBITRATOR

The material establishes, beyond controversy, that the grievor was involved in a telephone conversation from his home with a Transport Canada Railway Operations inspector on May 3, 2007. That telephone call was in fact placed by the inspector, apparently prompted by an email received from Mr. Geiler. Mr. Geiler holds Union office and at the material time was the Provincial Legislative Representative for his Union in Manitoba. In that capacity he was responsible for corresponding with Transport Canada on a number of issues, and doing so on behalf of members of the Union employed by Canadian Pacific Limited as well as by CN and a third, separate short line.

The telephone conversation between Mr. Geiler and the Transport Canada inspector resulted in a complaint being registered by the inspector with the Company. Essentially her statement relates that during the course of the telephone conversation the grievor adopted an aggressive and unacceptable tone and words which, in the end, she felt constituted bullying and harassment towards her. The grievor denies that in fact he adopted any such tone. He maintains that it was the inspector who used an improper tone, apparently disturbed by his suggestion that if she did not have jurisdiction to deal with an issue of concern, involving open gates on hopper cars and their related danger, he would have to take the matter up with the Minister. According to Mr. Geiler that prompted a strong reaction from the inspector and, in the Union's view, may have substantially coloured the complaint which was ultimately brought forward to the grievor's employer.

The Union maintains that in the case at hand the assessment of thirty demerits against Mr. Geiler, virtually half the value of a discharge, is entirely inappropriate. Most particularly, it stresses that the communication between Mr. Geiler and the Transport Canada inspector was entirely unrelated to Mr. Geiler's employment with Canadian Pacific. From the Company's standpoint, because Mr. Geiler was part of the Company-Union Joint Health & Safety Committee, his communications with the Transport Canada inspector on the occasion here under review must be viewed in that context, and constituted unacceptable conduct on the part of an employee.

The Arbitrator has substantial difficulty with the position advanced by the Company with respect to the grievor's status insofar as his conversation with the Transport Canada inspector is concerned. I am satisfied that he was communicating with her solely in his capacity as the Provincial Legislative Representative for Manitoba. Nor do I consider it necessary to determine whether the account of the conversation given by Mr. Geiler or that of the inspector is to be preferred. Even accepting that Mr. Geiler used the words alleged by the inspector, stating that if a serious accident should occur, blood would be on her hands, that is plainly the kind of hard communication which might reasonably be expected of a union representative transacting business that is adversarial or controversial. In the context of the relationship between Mr. Geiler and the inspector, I do not consider that he was in fact crossing the line of harassment and bullying. Boards of arbitration, including this Office, have well recognized the need for a certain leeway in the communications of union officers discharging their duty. (**Re Natrel Inc. and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647**, [2005], O.L.A.A. No. 21 (Surdykowski); **Re Burns Meats Ltd. And Canadian Food & Allied Workers, Local P139** (1980) 26 L.A.C. (2d) 329 (M.G. Picher); **CROA 632**)

On the basis of the foregoing considerations the Arbitrator is satisfied that there was no just cause for the Company to assess discipline against Mr. Geiler. Even if it should be found that that conclusion is incorrect in law, the Arbitrator would also be compelled, by the rules of evidence, to give the Union the benefit of the doubt as to the content of the conversation between Mr. Geiler and the Transport Canada inspector. The only evidence before me as regards her view of what was said is a hearsay written statement filed in evidence by the Company. On the other hand, the grievor was present at the hearing, available for cross-examination. It must, therefore, be concluded that the better evidence in that regard is advanced by the Union.

For all of the foregoing reasons the grievance is allowed. The Arbitrator directs that the thirty demerits be removed from the grievor's record forthwith.

April 14, 2008

(signed) MICHEL G. PICHER
ARBITRATOR