

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

CASE NO. 3677

Heard in Edmonton, Tuesday, 10 June 2008

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION**

DISPUTE:

Dispute concerning the assessment of thirty demerits to R. Slobodian.

JOINT STATEMENT OF ISSUE:

The grievor, Mr. Ron Slobodian, is the Secretary/Treasurer of his local lodge. As a Union officer the grievor was involved with the charge and trial of members alleged to have worked for the Company during the strike of May-June 2007. Prior to the trial the Union provided the grievor with evidence it collected for use at the trial. This included copies of putative expense sheets that indicated where and when the accused members worked during the strike. The evidence was introduced and used at trial. As a result of the use of this evidence the grievor was assessed with 30 demerits for the alleged improper and unauthorized use and disclosure of personal information. A grievance was filed.

The Union contends that: **(1.)** the grievor, a Union officer, was obligated to act pursuant to the provisions of the IBT Constitution; **(2.)** the grievor's receipt of the expense sheets was entirely unsolicited. He did not collect them or distribute them to the public. They were forwarded to him by the Union and used only for purposes related to the conduct of formal trial proceedings under the IBT Constitution; **(3.)** the grievor was not aware of any Company rule or policy that prohibited him from using the information in the manner that he did. Indeed, the Company habitually uses private information for disciplinary purposes without the express consent of the workers involved; **(4.)** the grievor broke no privacy law. Section 7(1)(b) of the Personal Information Protection and Electronic Documents Act provides that an organization may collect personal information without the individual's consent where it is reasonable to expect that the collection with the knowledge or consent of the individual would compromise the availability or the accuracy of the information and the collection is reasonable for purposes related to the investigating of a breach of an agreement or a contravention of the laws of Canada or a province. **(5.)** the assessment of discipline was undeserved and inappropriate in the circumstances.

The Union requests that the 30 demerits assessed against the grievor be rescinded and removed from his record immediately.

The Company denies the Union's contentions and declines its request.

FOR THE UNION:

(SGD.) Wm BREHL
PRESIDENT

FOR THE COMPANY:

(SGD.) D. FREEBORN
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

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| R. Hampel | – Counsel, Calgary |
| S. Seeney | – Director, Labour Relations, Calgary |
| D. Freeborn | – Manager, Labour Relations , Calgary |
| K. Heir | – Labour Relations Officer, Calgary |

There appeared on behalf of the Union:

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|--------------|---------------------|
| Wm. Brehl | – President, Ottawa |
| D. Brown | – Counsel |
| R. Slobodian | – Grievor |

AWARD OF THE ARBITRATOR

The Union went on strike on May 15, 2007 and the parties reached a settlement on June 7, 2007. A number of the bargaining unit members were accused of having violated the Union's constitution by working for the Company during the strike. Those who were alleged to have violated the constitution included Mr. Darryl Dolph and Clifford Knoll who, like the grievor, were members of the same Local in Regina.

In accordance with Article XIX of the Union's constitution, the grievor, in his capacity as Secretary-Treasurer of the Local, forwarded copies of the alleged violations to Mr. Dolph and Mr. Knoll by registered mail. The grievor included a letter to each individual indicating that their union trial on the charges would take place in Regina. Mr. Dolph's trial was to take place on November 5, 2007 while Mr. Knoll's was to take place on November 6, 2007. Also included in the registered mail packages were the affected

employees' Travel Expense Statements, which recorded the meal and travel expenses submitted to the Company by each of the two employees during the strike. The grievor received copies of the Travel Expense Statements from Mr. Gary Doherty, TCRC/MWED Director of the Prairie Region.

According to the Union, the Travel Expense Statements were given to the grievor by Mr. Doherty because the grievor's duties, as Secretary-Treasurer for the Union, included the responsibility of serving the two employees with copies of the charges as well as notice of the date and place of the trial. Copies of the Travel Expense Statements were leaked to the Union by a Company Timekeeper, who was then a member of the bargaining unit (now retired), and received 55 demerits for his actions. According to the Union, the Timekeeper has filed a grievance and is challenging the discipline.

The grievor sat as a member of the executive panel which conducted the trials. He chaired the trial of Mr. Knoll held on November 6, 2007. According to a summary of the trial prepared by Mr. Knoll on November 13, 2007, he received a copy of his strike ballot and Travel Expense Statements at the outset of the meeting from the presiding union executive members. His summary further indicates that he requested to know how the Union had obtained his expenses but was never given an answer. According to the grievor's testimony at the arbitration hearing, he asked Mr. Knoll if it was all right to pass around his Travel Expense Statements and that Mr. Knoll replied "whatever".

According to Mr. Knoll's account in his summary, a fine was imposed by the Union at the conclusion of the trial.

In advancing the grievance at Step 1, the Union asserted that the grievor was unaware of any provisions of the Company's Policy 1804, **Privacy of Information**, or the **Personal Information Protection and Electronics Documents Act** (PIPEDA), until the date he provided his statement on November 27, 2007. As noted in the Joint Statement of Issue, one of the Union's submissions is that it is permissible for the Union, under s. 7(1)(b) of the **Act**, to collect information on an individual if the "... collection is reasonable for purposes related to investigating a breach of an agreement ..." (i.e. the International Brotherhood of Teamsters constitution). The Union also submits that the **Act** is aimed at the collection, use and disclosure of personal information in the course of commercial activity. The Union asserts that it is not engaged in any commercial activity, nor that of an employer/employee, and therefore the **Act** does not apply.

The Union noted in its submissions at arbitration, however, that the main issue is not whether there has been a technical violation of the **Act** (which is a sufficient basis to lodge a complaint before the Privacy Commissioner) but rather whether the grievor's actions merit discipline under the circumstances. I agree. In my view, The **Act** is only relevant to the extent that it is mentioned in the context of Policy 1804, whose purpose is set out as follows:

Canadian Pacific Railways will protect the privacy of its employees and other individuals with whom it deals by promoting responsible practices in the management of personal information collected in the course of managing its operations, including complying with employment-related legislation, in accordance with the provisions of *the Personal Information Protection and Electronic Documents Act* (PIPEDA)

In support of the above, CPR will ensure that all personal information collected and stored on any media is maintained in a secure manner and protected from unauthorized use and disclosure.

As noted, the policy states that it will ensure that personal information is protected from unauthorized use and disclosure. This is an important commitment to all employees, one that both the Union and Company must equally guard and respect. The information that was leaked to the Union was obviously valuable information to the Union to make its case against the employees being tried for breaching the Union constitution. However, it was also private information which was inappropriately obtained by a Company timekeeper.

In hindsight, the chain of command from the Union side should not have supported the dissemination of private documents like the Travel Expense Statements, even if those documents support allegations of a violation of their constitution. To borrow a phrase, the prejudice caused to the individual employees being tried outweighed their probative value to the Union's discipline proceedings. Employees have the right to expect that their private information will be kept private. Mr. Knoll's rights in that regard were clearly violated when his Travel Expense Statements were disclosed to the panel hearing his trial on November 6, 2007. The Union had other options open to it to prove its case, including the calling of witnesses who could have provided direct

evidence on the issues to be tried. To resort to private information to buttress its case was clearly inappropriate.

Returning to the grievor's role in this matter, I note that he was asked at his investigation whether he understood that the Travel Expense Statements were personal information. The grievor replied that he was unaware that it was an official Company document. He further stated at his investigation that he had "...never seen documents like that before and did not realize that it might be a Company document as there was no signature on the documents".

The Travel Expense Statements appear on their face to be a Company form. In that regard, it is a printed form which identifies, at the top of the document, that it is from CPR Engineering. It also shows the itinerary, the per diem settlement, and other costs. I simply cannot accept that a long-term employee like the grievor would not have immediately recognized the document as Company-generated information on both Mr. Dolph and Mr. Knoll whose names, personnel numbers and trip numbers also appear at the top of the page.

The grievor played a part in the process of the conveyance of the personal employee documents. He had an opportunity to set those Travel Expense Statements aside and follow the Union's own constitutional requirements under article XIX Section 1(c); that is, to simply serve the affected employees personally or by mail with a written

copy of the charges specifying the nature of the offence and provide notice of the trial date. Further, his comments at the investigation that he did not recognize the documents as being Company information do not stand up to scrutiny and undermines his overall credibility. After considering all the evidence before me, I find there to be just cause for discipline.

To reiterate, the Company, by its own policy is held to a high standard of protecting private employee information and union executive members, like the grievor, must be held to an equally high standard. The grievor violated that important right of privacy by distributing a document at the trial of Mr. Knoll containing the private information of Mr. Knoll. That is a serious violation of the Company privacy policy and thirty demerits is not out of range for such an offence. The grievor also displayed a lack of candour at the investigative meeting on the matter of whether he recognized the Travel Expense Statements to be company documents. I do, nevertheless, recognize that the actions of the grievor took place as a consequence of a legal strike and in his capacity as a union executive officer in the performance of his duties. In addition, I note in mitigation that the grievor is a long-service employee of 22 years with, commendably, no prior disciplinary record. Under the circumstances, I believe a lesser penalty is appropriate and substitute the thirty demerits on his record for this incident with a penalty of ten demerits.

June 18, 2008

(signed) JOHN M. MOREAU, Q.C.
ARBITRATOR