

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 3687**

Heard in Montreal Tuesday, 9 September 2008

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Appeal of the assessment of 30 demerits to Locomotive Engineer Rick Longworth.

JOINT STATEMENT OF ISSUE:

On October 4, 2007, Engineer Longworth was assessed 30 demerits for “failing to remain with your train when instructed and failing to conduct yourself in a professional and courteous manner as evidenced by your unprovoked verbal abuse and profane language directed towards a Company Officer, during your tour of duty on August 21, 2007, while employed as a Locomotive Engineer, Coquitlam B.C., a violation of CROR Rule A(ix).”

The Union contends that Engineer Longworth was held out of service, contrary to the Collective Agreement.

It is the Union’s position that the investigation in this matter 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 and Engineer Longworth should be made whole.

Further, the Union contends that the Company disclosed Engineer Longworth’s personal health information contrary to applicable federal privacy legislation.

The Union further contends that there is no cause for discipline in the in the alternative, that the penalty is excessive.

The Company disagrees and denies the Union’s request.

FOR THE UNION:

(SGD.) D. ABLE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. M. DORAIS
LABOUR RELATIONS OFFICER

There appeared on behalf of the Company:

J. M. Dorais

– Labour Relations Officer, Calgary

R. Hampel	– Counsel, Calgary
M. Thompson	– Labour Relations Officer, Calgary
R. Zegliaski	– Manager, Operations
F. Herbold	– Yard Manager
C. Lee	– Service Area Coordinator

And on behalf of the Union:

M. Church	– Counsel, Toronto
D. Able	– General Chairman, Calgary
G. Edwards	– Vice-General Chairman,
D. Delacherois	– Local Chairman,
G. Ranson	– Legislative Representative
R. Longworth	– Grievor

AWARD OF THE ARBITRATOR

The record discloses that on August 22, 2007, Mr. Longworth's assignment had completed its work at approximately 02:50 and sought yarding instructions from the Coquitlam Tower. A conversation ensued between Mr. Longworth and Multi-Yard Process Manager Arild Thu. Mr. Thu advised Mr. Longworth that his train would be delayed from forty-five minutes to an hour, and directed him that he should stay in the cab of his locomotive. Mr. Longworth, being advised of the delay said simply "... I'll tie it all down for you and leave it for you at Westwood." Mr. Thu advised him that he would not be doing that, that he was still on duty and that he could stay with his train. Notwithstanding that directive, Mr. Longworth advised that he would be leaving the train, but could be reached on his cell phone. It seems that Mr. Longworth, in the company of his brakeman, then walked approximately one mile to the yard office where he eventually encountered Mr. Thu.

The Arbitrator is satisfied that during the course of that encounter Mr. Longworth used insulting and provocative language towards Mr. Thu, and told him, among other things, to “fuck off”. Although Mr. Longworth appears to have indicated that he had no intention of yarding his train, after the encounter with Mr. Thu, by Mr. Thu’s estimate perhaps ten minutes later, Brakeman Joe Healy called him and asked for a ride back to the train for himself and Mr. Longworth. It does not appear disputed that the two crew members returned to their train, which had been left under the control of the conductor, and yarded it appropriately.

The above incident led to an investigation conducted on August 21, 2007, an investigation which also addressed an earlier incident in which Mr. Longworth had complained about the seat on his locomotive. During the course of the investigation the grievor denied that he had addressed the offensive words to Mr. Thu, stating that he had simply uttered them in a very general way, without any intention to offend his supervisor. Following the investigation interview of the grievor, on September 11, 2007 the Company conducted examinations of witnesses John Lorch and Wayne Tremblay, as well as Brakeman Joe Healy. It appears that the written notification to the grievor of those procedures was received by him on the day previous, via courier at his home address on September 10, 2007, some twenty-four hours prior to the additional statements.

Following the taking of those three statements the Company conducted a further disciplinary interview of Engineer Longworth on September 24, 2007. He was thereafter

assessed thirty demerits for failing to remain with his train and conducting himself in an unprofessional and discourteous manner in using profane language directed towards a Company officer during his tour of duty on August 21, 2007. No discipline attached to the events of June 24, 2007 concerning the issue of an allegedly defective seat in the grievor's locomotive.

The Union argues that the investigation was not conducted in a fair and impartial manner, as required by the collective agreement. Alternatively it submits that there was no cause for discipline in the circumstances.

The principle thrust of the procedural objection taken by the Union is that the grievor did not in fact have two days' written notice of his investigation, but rather only one day. Objection is also taken to the fact that the three employees who became witnesses were interviewed only after the grievor gave his principal statement. The Union maintains that their evidence should have been obtained first, with the opportunity of the grievor to review their statements and comment on them before giving his own statement. The Union also objects to the fact that the three employees were shown information drawn from the record of the grievor's own investigation statement which, it does not appear disputed, contained personal medical information which should not have been disclosed to them. The Company does not dispute that error.

The Arbitrator turns to consider the procedural objections taken by the Union. This Office has consistently maintained the importance of adhering to the procedural

requirements of a fair and impartial investigation, including the need to respect the obligation to give proper notice. There are, however, certain overriding principles which must be considered in examining whether the technical failure to give 48 hours' notice in writing, where, as in the instant case twenty-four hours' notice was in fact provided to the grievor, there is a sufficient failure of fairness to vitiate the entire procedure. In dealing with that issue, this Office must also take into account the conduct of the grievor himself.

The Arbitrator is satisfied that Mr. Longworth did everything in his power to remain unavailable to the Company officers attempting to schedule his disciplinary investigations. The record discloses that he was virtually never available to answer telephone calls, and that, almost without exception, he did not return messages left on his voice mail. That, it would appear, is entirely inconsistent with his normal way of dealing and communicating with his employer. In these circumstances the Arbitrator cannot sustain the procedural objections raised by the Union. The fact is that in all cases notice was provided to Mr. Longworth and he was in a position to attend the investigations and make such objections as he chose to do. Nor did the order in which witnesses were heard result in any unfairness to him. On the whole, however, I am satisfied that there was no miscarriage of justice as regards his rights and that the Union's objection with respect cannot be sustained in these particular circumstances.

With respect to the merits I am also satisfied that the position of the Company is well founded. While it is true that Locomotive Engineer Longworth may well ultimately

have yarded his train as instructed, the fact remains that he did defy a directive to remain with his locomotive and that he was clearly disrespectful and insubordinate in his verbal assault upon Supervisor Thu. His prior record involves two discharges for conduct which includes disrespectful behaviour and inappropriate conduct, both reduced by this Office to allow for his reinstatement. In the circumstances the penalty was appropriate and the Arbitrator is satisfied that the instant grievance must be dismissed.

September 15, 2008

signed MICHEL G. PICHER
ARBITRATOR