

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 3689**

Heard in Montreal Tuesday, 9 September 2008

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Appeal of the file closure of Locomotive Engineer Rick Longworth effective October 26, 2007.

JOINT STATEMENT OF ISSUE:

Engineer Longworth was held out of service as of August 22, 2007. By a letter from the Company dated October 26, 2007, Engineer Longworth was notified that his employment file with the Company was closed.

The Union contends that Engineer Longworth was held out of service contrary to the Collective Agreement. Furthermore, the Union contends that the file closure was a disciplinary penalty tantamount to discharge; here, discipline was not assessed according to the procedural requirements under the Collective Agreement.

It is the Union's position that an investigation was not conducted per the mandatory requirements of the Collective Agreement. For this reason, the Union contends that the file closure is null and void and Engineer Longworth should be made whole.

The Union further contends that there is no cause for discipline in the circumstances, or in the alternative, that the termination of Engineer Longworth's employment is excessive.

In the alternative, the Union contends that the Company's unprecedented conduct in the course of closing Engineer Longworth's file is unsupported by the Collective Agreement and contrary to the reasonableness requirements on the Company's exercise of managerial rights.

The Union requests that Engineer Longworth be reinstated without loss of seniority and benefits, and that he be made whole for all lost earnings with interest. 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. 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

On October 18, 2007 an investigation was conducted into certain statements made by Mr. Longworth. In effect, he had on a number of occasions made comments to the effect that he would not obey the instructions of a Company supervisor. As is evident from the record of the investigation, the narrative degenerated into a bout of word games in which Mr. Longworth insisted that he would not listen to the instructions of a supervisor, but only those of a conductor, as regards the movement of his train. In that regard he invoked rule 106 of the CROR.

The record discloses that Mr. Longworth did, apparently begrudgingly, state that there might be circumstances where he would be compelled, as an employee and not as a locomotive engineer, to comply with an instruction of a supervisor. He remained somewhat evasive, however, as regards the specifics of such a circumstance. Mr.

Longworth has a unique gift for converting an investigation into a minor incident into a confrontation that prompts his discharge. He did precisely that in **CROA 3112**, where an investigation in respect of a caution itself became the cause of his dismissal by reason of his conduct in the investigation.

The investigative record truly has a sense of unreality about it. For the Company to be questioning an employee of thirty-two years' service as to whether he would obey instructions from a supervisor seems highly unusual. But in the Arbitrator's view the Company's concern was understandable. In a recent event Mr. Longworth had demonstrated that he can be dismissive and scornful toward a supervisor, blatantly ignoring his instructions. As he admitted on that occasion, in relation to an incident on August 21, 2007, when he refused to obey an instruction of his supervisor on the basis that he found it to be "an unacceptable request". There are obvious grounds to question whether Mr. Longworth has any conception of the "obey now – grieve later" principle.

Following the disciplinary investigation, the Company determined that the appropriate action was to make the grievor's continued employment conditional upon the signing of a last chance employment agreement. The employment contract was presented to him, in the company of his Union representative, on October 25, 2007. The letter reads, in part, as follows:

This refers to the investigation conducted into comments you are alleged to have made to Company officers on October 8th 2007, as it pertained to the employment relationship you have with Canadian Pacific Railway. Specifically, these comments called into question your ability to follow instructions from any Company officer.

Upon review of the investigation into these comments, the Company is satisfied that you did in fact make the alleged comments. In any other circumstances,

such comments would have warranted substantial discipline, which given your precarious disciplinary position would have only one outcome. Your comments also call into question your own ability to continue the employment relationship with Canadian Pacific Railway.

Notwithstanding, after careful consideration of all factors, the Company is prepared, without precedence or prejudice, to afford you one final opportunity to salvage your employment relationship with the Company.

In this regard, I wish to make it absolutely clear that the following provisions apply to all employment relationships at Canadian Pacific Railway, including yours;

1. In the employer-employee relationship, the employee has an obligation to work for the employer's interest.
2. Within the employment relationship, employee's have a duty to cooperate with their employer.
3. An employee must be willing and able to follow all instructions from any Company officers or individual in a position of authority within the Company, such as a Rail Traffic Controller, within the parameters of the Canada Labour code.
4. Any deviation from or failure to abide by the directions of a Company Officer or individual in a position of authority within the Company will be viewed as a failure to follow proper instructions.
5. Any failure to conduct yourself in a courteous and cooperative manner while carrying out the instructions of Company officers will be viewed as a violation of the basic employer-employee relationship.
6. By failing to acknowledge receipt of this letter, your refusal will be treated as an indication you are unwilling and unable to work under the normal employer-employee relationship within Canadian Pacific Railway and will result in the closure of your employment record.

This letter will be placed on your employment file as a record of the investigation into the incident of October 8th, 2008 [sic].

I trust this clarifies the Company's position as well as the expectation it has of its employees in the performance of their duties.

If you have any question with respect to the foregoing, I will only address your written submissions on specific concerns you may have.

Yours truly

R. Hartline
Service Area Manager

During the course of the meeting the grievor refused to sign the document. He left the meeting, advising at least two people as he did so that he had effectively been fired. Fortunately Mr. Longworth's Union representative requested a copy of the draft contract, which was provided to him later that day.

It appears that the draft contract was immediately forwarded to higher Union officers, and Union counsel. They promptly advised Mr. Longworth of the wisdom of signing the proposed contract which, it appears, Mr. Longworth finally did on October 31, 2007.

The Company maintains that he was too late. It would appear that after he left the meeting on October 25, 2007, and made no further contact with the Company in the days immediately following, the Company decided to close his employment file. In the result, on October 26, 2007, several days before Mr. Longworth in fact signed the letter, the Company sent him written notification that it was closing his employment file. That letter reads, in part, as follows:

At the meeting, Manager Road Operations Schille presented you with a letter in which the Company outlined the expectation it has of its employees. You were asked to acknowledge receipt of the letter and it was clearly stated that your failure to do so could only be viewed as an indication of your unwillingness to work within the normal employer-employee relationship at Canadian Pacific Railway.

Since you refused to sign this letter after having heard the contents, the Company has concluded that you are unwilling to maintain your employment relationship with the Company and your employment record is being closed. Please return all Company equipment by October 31 2007.

The Union submits that the grievor did not receive the proper written notification of the investigation conducted on October 18, 2007. For reasons touched upon in prior

awards, **CROA&DR 3687 & 3688**, the Arbitrator is satisfied that the grievor's own actions, deliberately evading communications from the employer, preclude the assertion of that position so as to vitiate his termination in the case at hand. I am satisfied that the grievor was afforded the procedural fairness in the investigation of his alleged assertions that he would not obey the directions of Company supervisors.

In the result, the Arbitrator is satisfied that the Company did have cause to take disciplinary action against the grievor. Closing his file, which is tantamount to discharge, is plainly the discipline which it chose to assess.

In the extraordinary circumstances of this case, however, there are mitigating factors to consider. It is evident that the Company was prepared to continue the grievor's employment, on condition that he sign the letter presented to him on October 25, 2007. In all of the circumstances I am satisfied, particularly given the thirty-two years' service rendered by the Mr. Longworth, that it is appropriate to substitute a lesser penalty in the case at hand, by effectively reinstating the letter proposed by the Company.

The grievance is therefore allowed, in part. The Arbitrator directs that Mr. Longworth be reinstated into his employment forthwith, without compensation for any wages or benefits lost. His reinstatement shall be conditioned on his accepting, on an ongoing basis, to observe the terms of the letter presented to him by the Company on October 25, 2007 and signed by him on October 31, 2007, as a condition of his ongoing employment.

September 15, 2008

signed MICHEL G. PICHER
ARBITRATOR