

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 3700**

Heard in Montreal Tuesday, 14 October 2008

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal discharge of Locomotive Engineer Jeffery Crone of Toronto, Ontario for Conduct Unbecoming on November 19, 2007.

JOINT STATEMENT OF ISSUE:

On November 19, 2007, Mr. Crone was employed as a locomotive engineer in the terminal of Toronto South. Mr. Crone while in the booking in room at MacMillan Yard encountered ... a new employee making her initial training trips as a conductor. Mr Crone made a number of comments to the employee which made her feel uncomfortable and she filed a complaint with the Company.

Following an investigation of the matter, Locomotive Engineer Crone was discharged effective 19 November 2007 for conduct unbecoming.

The Union has appealed the discipline based on the grounds that it was too severe, and request that the discipline be adjusted to a more appropriate level such as a suspension.

The Company disagrees with the Union and maintains that the discipline assessed in this situation was warranted and reasonable.

FOR THE UNION:

(SGD.) P. VICKERS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) B. HOGAN
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

B. Hogan	– Manager, Labour Relations, Toronto
D. VanCauwenbergh	– Director, Labour Relations, Edmonton
R. Helmle	– Manager, CMC, Eastern Canada, Toronto
R. Jennett	– Locomotive Engineer, Toronto North
R. Pronovost	– C.L.O., Toronto North

And on behalf of the Union:

J. G. Morrison	– Counsel, London
P. Vickers	– General Chairman, Sarnia
J. Crone	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor did engage in the verbal sexual harassment of another employee in the booking in office in Macmillan Yard on November 19, 2007. He made sexually explicit suggestions to a female trainperson trainee in the presence of a number of other employees. It was only when the employee responded that his words would give her nightmares that he relented, saying that he was only joking and offering to shake hands.

The words had an obviously negative effect on the newly recruited employee, who complained to her supervisors immediately upon the return of her assignment to Macmillan Yard. Following a disciplinary investigation, and considering that in an earlier incident the grievor had ultimately been given a lengthy suspension by reason of inappropriate language on the telephone with a female crew dispatcher, the decision was made to terminate Locomotive Engineer Crone.

The Arbitrator can readily understand that decision by the Company. There can be no place in any workplace for abusive and suggestive sexual language aimed at any employee, regardless of the circumstances. That has been repeatedly recognized in the decisions of this Office (see, e.g., **CROA 1791** and **2077**).

There is, however, an important mitigating factor to be considered in the case at hand. Among the materials put before the Arbitrator is a medical report which confirms that at the time of the incident the grievor was under considerable personal stress by reason of the break-up of his own marriage and, more significantly, was suffering from clinical depression for which he was taking prescription medication. The foregoing information is confirmed in a medical report prepared by the grievor's personal physician, Dr. Arthur V. Hankey. That report discloses that the grievor has had depression causing temporary disorder and communication problems for some time. It is clear that that condition was operative on the occasion of the incident which is the subject of this grievance. It should be noted, however, that the grievor's medical condition was not communicated to the Company at the time of its disciplinary investigation.

In all of the circumstances the Arbitrator is satisfied that this is an appropriate case for a reduction of penalty. The Arbitrator therefore directs that the grievor be reinstated into his employment forthwith, without compensation for wages and benefits lost and without loss of seniority. His continuing employment shall, however, be conditioned on first providing medical certification of his fitness to return to work and on the understanding that he not be assigned to work with the employee who was the victim of his harassment, unless and until she indicates a willingness to work with him.

October 20, 2008

(signed) MICHEL G. PICHER
ARBITRATOR