

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

CASE NO. 3716

Heard in Montreal, Thursday, 11 December 2008

Concerning

TORONTO TERMINAL RAILWAY

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL
WORKERS UNION OF CANADA (CAW-CANADA)**

DISPUTE:

The assessment of discharge of employee Bruno Ierullo for his alleged “conduct unbecoming and verbal threats towards a GO Transit Manager on June 26, 2008.”

JOINT STATEMENT OF ISSUE:

The Union contends that the Company failed to satisfy its burden of proof as it relates to the alleged irregularity. The Union further contends that the discipline assessed was excessive, unwarranted and, if warranted, contrary to the principles of progressive discipline, and that the Company’s decision to discipline was arbitrary and discriminatory.

The Union suggests that the Company has failed to take into account mitigating factors including, but not limited to, the length of the grievor’s service.

The Union seeks in resolution of the matter that the Company reinstate the grievor, with total compensation for all lost wages and benefits.

The Company disagrees with the Union’s contentions and has declined the Union’s grievance.

FOR THE UNION:

(SGD.) D. OLSHEWSKI
NATIONAL REPRESENTATIVE

FOR THE COMPANY:

(SGD.) F. O’NEILL
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

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| F. O’Neill | – Manager, Labour Relations, Toronto |
| S. Spares | – Director of Operations, Toronto |
| E. Koopmans | – Construction Supervisor, GO Transit, Toronto |

S. Prudames – Witness

And on behalf of the Union:

D. Olshewski – National Representative, Winnipeg
J. Almdale – Regional Representative, Toronto
R. Greco – Witness
B. Ierullo – Grievor

AWARD OF THE ARBITRATOR

Upon a review of the evidence and materials, the Arbitrator is satisfied that the grievor, Mr. Bruno Ierullo did conduct himself in a manner unbecoming in his encounter with GO Supervisor Esther Koopmans on June 26, 2008.

The evidence indicates that Mr. Ierullo arrived at a track location at Union Station where a number of contract workers were performing repairs, for the purposes of conducting a job briefing. The grievor immediately confronted and berated GO Supervisor Koopmans because in his view the employees who were present were in dangerously close proximity to a live track. The Arbitrator is satisfied that the tone and choice of words unfortunately used by Mr. Ierullo were dismissive and demeaning of the GO supervisor, causing her unnecessary embarrassment in the face of a group of employees. I am also satisfied that the grievor's words could reasonably have been interpreted by Ms. Koopmans as indicating that the grievor might take steps to have her dismissed as a supervisor, through a statement to the effect that he had taken such steps with other supervisors in the past. Ultimately, Mr. Ierullo left the site without in fact conducting any meaningful job briefing.

The Arbitrator can readily understand the sentiment of GO Transit, and the feelings of Supervisor Koopmans. It is obviously important to the Toronto Terminal Railway, which no longer owns the premises, to maintain positive relations with GO Transit, which now owns the tracks for whose maintenance the Company, and by extension the grievor, is responsible.

The fundamental issue is whether the events, which I am satisfied did give cause for the assessment of discipline against Mr. Ierullo, are sufficient to bring an abrupt end to his employment of some twenty-seven years, particularly in light of the fact that his prior disciplinary record reveals only two prior, minor incidents in which he was assessed demerits, neither for conduct of the kind which gave rise to this dispute. On the whole, I am satisfied that the interests of the employer can be protected by a reinstatement of the grievor into employment, subject to certain conditions, and without compensation for his wages and benefits lost. Those conditions are expressly fashioned in recognition of the understandable concern of GO Transit.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without compensation for any wages and benefits lost. The grievor's reinstatement shall, however, be conditioned upon his first providing a written letter of apology to GO Transit Manager Esther Koopmans, to be copied to the Company and also to be copied to GO Transit Manager Grant Bailie, and to GO Transit accepting Mr. Ierullo's return to work on its premises.

The Arbitrator remits this file to the parties to deal with the implementation of the terms of this award. Should they encounter any difficulty or disagreement in that regard, the matter may be returned to the Arbitrator, reserving full jurisdiction to apply any and all alternative remedies which may be appropriate in the circumstances of this case.

December 15, 2008

(signed) MICHEL G. PICHER
ARBITRATOR