

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

CASE NO. 3725

Heard in Montreal, Wednesday, 11 February 2009

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discharge of Locomotive Engineer François Boulet.

JOINT STATEMENT OF ISSUE:

On October 17, 2008, Mr. Boulet was required to attend a formal investigation in connection with the circumstances surrounding: "Alleged conduct unbecoming an employee while employed as locomotive engineer on train M30451-05 on Oct. 08th, 2008".

Following the investigation, the Company issued a Discipline Form 780 dated October 28, 2008 assessing Mr. Boulet with a discharge from Company [service] for "Conduct unbecoming an employee while employed as locomotive engineer on train M30451-05 on Oct. 08th, 2008".

The Union contends that the discipline assessed Mr. Boulet was excessive and should be adjusted to a more appropriate level.

The Company disagrees.

FOR THE UNION:

(SGD.) P. VICKERS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. A. BOWDEN
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

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| R. A. Bowden | – Manager, Labour Relations, MacMillan Yard, Concord |
| F. O'Neill | – Manager, Labour Relations, MacMillan Yard, Concord |
| R. L. Desforges | – Assistant Manager, Rail Traffic Control Centre, Toronto |
| N. Chambers | – Assistant Superintendent, |

And on behalf of the Union:

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| J. C. Morrison | – Counsel, London |
| P. Vickers | – General Chairman, Sarnia |
| M. Boulet | – Witness |
| R. A. Beatty | – Transition Director, Sault Ste. Marie |
| J. Robbins | – General Chairman, Sarnia |
| G. Gower | – Vice-General Chairman, Belleville |
| F. Boulet | – Grievor |

AWARD OF THE ARBITRATOR

On October 8, 2008, the grievor was the locomotive engineer on a train M30451-05. While on his tour of duty, the grievor had two conversations with Mr. R. Desforges, Assistant Manager of the Rail Traffic Control Centre in Toronto. The first conversation was in English and took place at 14:31 from Shekak. The second conversation took place in French at 17:54 from Dishnish. A transcript of both conversations formed part of the Company's brief. The Arbitrator also had occasion to listen to an actual recording of both conversations.

As the Union notes, the focus of the investigation held on October 17, 2008 was principally concerned with the Dishnish conversation. The only question asked of the grievor with respect to the Shekak conversation was whether in fact the discussion had taken place and whether the recording was accurate. The grievor acknowledged that he spoke with Mr. Desforges and that both conversations were accurate.

The Company asserts that the grievor should be disciplined as a result of his threatening of job action in the Shekak conversation. In reviewing both the transcript and a tape of the Shekak conversation, the Arbitrator is hard-pressed to find any suggestion on the part of the grievor of job action. Although the grievor displayed impatience due to numerous operational delays during the Shekak conversation, which lasted no more than a minute, the conversation was never evidently intended to be threatening. In fact, the opposite appears to be true. A close review of the audio tape indicates that Mr. Desforges himself was quietly laughing at a number of the grievor's comments. In the end, the Arbitrator agrees with the Union that the comments can best be classified as "shop talk". I find no evidence, as stated, that the grievor's comments threatened job action. Accordingly, the Company did not have just cause to discipline the grievor as a result of the Shekak conversation.

The Dishnish conversation was even briefer, lasting probably no more than 30 seconds. This time the grievor spoke to Mr. Desforges in French. The grievor contacted Mr. Desforges at 17:54 to ask him if he was going home. The grievor then proceeded to say in French that he hoped Mr. Desforges crashed his vehicle on his way home. The grievor punctuated this comment at the end with the phrase "*mon chum*", roughly translated into English as "my friend". That comment was clearly inappropriate and Mr. Desforges was understandably not amused. He told the grievor in reply that he was speaking on a recorded conversation line. The grievor did not say anything more and hung up the telephone.

It is fair to draw an inference that the grievor knew he was in trouble when he hung up the telephone. He did not apologize for his comments to Mr. Desforges until he was summoned for the investigation. In my view, the Dishnish comment was clearly deserving of discipline. Shop talk is one thing but there is no room for unwarranted comments of the kind uttered by the grievor. The comments upset Mr. Desforges to the point that he felt compelled to report the grievor for his ill-considered behaviour. He took the comments seriously and had every right to do so. Under the circumstances, the Company did have sufficient cause to discipline the grievor over the Dishnish comments.

The grievor's recent disciplinary record includes a ten day suspension in September 2005 for conduct unbecoming while talking to a Company officer. In 2007, the grievor received a suspension from January 31 until September 15th for insubordination. He most recently received a written warning on February 2, 2008 for another incident involving a fellow employee. This is a case where the grievor's behaviour on October 28, 2008 can be properly treated as a culminating incident. He has a lengthy record of conduct unbecoming an employee. The grievor, on the other hand, has over twenty years of service with the Company. He has sought and received assistance for alcohol addiction and anger management in years past, and most recently in April 2008 some six months before this incident.

The facts of this case, although serious, should not spell the demise of the employment relationship. The grievor, nevertheless, should understand that his employment is in serious jeopardy and that a further transgression for conduct of this kind could end his employment with the Company.

The grievor is to be reinstated immediately into his position, without loss of seniority and without compensation for any lost wages or benefits. His disciplinary record shall be amended to record a period of suspension from October 28, 2008 to the date of his reinstatement for the Dishnish incident alone.

February 17, 2009

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