

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

CASE NO. 3728

Heard in Montreal, Thursday, 12 February 2009

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED STEELWORKERS OF AMERICA (LOCAL 2004)

DISPUTE:

The discipline of a written reprimand assessed against the record of Mr. Keith Pitt for the circumstances surrounding the injury to the palm of his right hand during his shift on March 20, 2008.

JOINT STATEMENT OF ISSUE:

On Thursday, March 20, 2008, Mr. Pitt sustained an injury to the palm of his right hand. Following an investigation of the matter, Mr. Pitt was assessed a written reprimand for his alleged failure to abide by Safety Rules, G.O.I., Section 8.

It is the Union's position that there were no grounds for discipline, and that the discipline assessed in this instance was unjustified and unwarranted.

The Union contends that the assessment of discipline violated articles 18.2 (b), (c), (d) and (e), and Appendix VI of agreement 10.1, as well as portions of the Canada Labour Code.

The Union further contends that the investigation held on March 27, 2008, was not held in a fair and impartial manner.

The Union requested that the discipline assessed to Mr. Pitt be removed in its entirety.

The Company disagrees with the Union's contentions and has declined the Union's request.

FOR THE UNION:

(SGD.) M. PICHÉ
STAFF REPRESENTATIVE

FOR THE COMPANY

(SGD.) D. BRODIE
FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

C. Gilbert – Manager, Labour Relations, Montreal
A. deMontigny – Director, Labour Relations, Montreal

And on behalf of the Union:

J. Dinnery – President, Saskatoon

AWARD OF THE ARBITRATOR

The grievor decided to make a Teflon washer in order to repair a lathe in the component room of the Work Equipment Shop. Although the lathe he used to make the washer was not the one he normally works with in the Shop, the grievor was generally familiar with lathes. In that regard, the Union noted that he has taken a course on the operation of lathes at a community college and has 23 years of on-the-job experience with this type of equipment.

The grievor, while preparing to build the washer, was required to adjust the head on the lathe. There are two Allen head bolts clamping the cutting head to the lathe bed. The grievor loosened the one nearest to him, which is easily visible. He then fitted the Allen head tool to the rear bolt, which is less visible, applying pressure all the while in order to loosen it. The bolt did loosen but the grievor's hand followed through and hit an unseen shim. The grievor cut his hand and received three stitches. The Union pointed out that it was not feasible to adjust the rear bolt on the lathe by simply going around the machine due to it being adjacent to a wall. The grievor completed an accident report and was then given modified duties for the rest of his shift.

The Company noted that the grievor had attended a safety refresher training course just the previous day as part of the Company's interest in improving overall safety and reinforcing the safety awareness of the mechanics. Employees who attended the refresher training session were asked to only use a machine with which they were familiar. The grievor nevertheless took the decision to repair his old lathe by building a washer with another lathe in the Engine room. The Company also noted that the grievor performed this unfamiliar task without fully inspecting the lathe machine as required by the General Operating Instructions, section 8, and as instructed only the day before at the safety awareness session. The Company also noted that the grievor failed to use the "four second focus", which is required as part of the application of the safety rules, whenever an employee starts and/or changes tasks during the work day. The four basic questions are:

Do you have a clear understanding of the work to be performed?

Are there any immediate hazards?

Are you using the right tools and equipment for the job?

Are there specific safety rules or procedures to follow.

The Union's fundamental position on this incident is that the grievor acted prudently under the circumstances and should not have been disciplined. Simply put, the Union maintains that an accident occurred which is not attributable to the negligence or carelessness of the grievor.

The Arbitrator finds this to be one of those difficult cases where a long-term employee with a commendable work record suddenly finds himself being disciplined for what he views as an innocent accident. Applying pressure on an Allen wrench is a manoeuvre undertaken daily by people in the workplace and in their own homes. The concern the Arbitrator has here is for the safety environment the Company is trying to protect.

The grievor had just attended a safety meeting the day before where he was reminded to be vigilant and to only use familiar equipment. Although the grievor was an experienced lathe operator, he did, out of his own initiative, decide to build a washer on a lathe that was not his own. In doing so, he was required to prepare the machine by loosening two bolts with an Allen wrench. Being unfamiliar with the lathe, the grievor, in my view, failed to pay attention to the shim while loosening the second bolt. Had he adhered to the "four second focus", he would have observed the proximity of the shim and made allowances for the manoeuvre. Perhaps, after examining the area a little closer, he may even have determined how to perform the move without risk or injury. In any event, he evidently hit the shim forcefully enough to cut his hand with a wound that required three stitches.

In the end, I find this to be a case where the grievor should have been more careful before he undertook the task of loosening the rear bolt with an Allen wrench. The Company did have just cause for discipline. To find otherwise, in my view, would send the wrong message out to employees in similar work venues who must always remind themselves that safety comes first.

I do not agree with the Union that there was any violation of the **Canada Labour Code**, as alleged. The grievor was not, for the reasons stated, improperly disciplined for a work-related accident. He was disciplined as a result of his own carelessness and failure to adhere to the Company's strict safety policies.

For all the above reasons, the grievance is dismissed.

February 17, 2009

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