

CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3834

Heard in Montreal, Wednesday 9 December 2009

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The discipline assessed to Locomotive Engineer J. Chevalier for unacceptable behaviour towards a Company officer on October 3, 2007 and for conduct unbecoming and threats towards a Company officer on February 19, 2008, resulting in his dismissal for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

On October 16, 2007, Mr. Chevalier was investigated for conduct unbecoming towards a Marketing Manager on October 3, 2007. subsequent to this investigation, the grievor's record was assessed twenty-five (25) demerits.

The Union contends that Mr. Chevalier never meant to be disrespectful and as the only one investigated. The Union requests that all discipline be removed from Mr. Chevalier's record.

On February 25, 2008, Mr. Chevalier was investigated for inappropriate behaviour and threats towards a Company officer. Following this investigation, the grievor's discipline record was assessed with forty-five (45) demerits, which resulted in dismissal for accumulation of one hundred (100) demerits.

The Union contends that there was no just cause for discharge in this case and further contends that there were mitigating factors which should be taken into consideration that would warrant the substitution of the discipline assessed to another form of discipline.

FOR THE UNION:

(SGD.) PAUL VICKERS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) A. DAIGLE
FOR: VICE-PRESIDENT, OPERATIONS

There appeared on behalf of the Company:

A. Daigle	– Manager, Labour Relations, Montreal
D. Gagné	– Sr. Manager, Labour Relations, Montreal
J. Lavoie	– Market Manager, Montreal
G. Bélanger	– Transportation Supervisor, Montreal
M. Lapierre	– Transportation Supervisor, Montreal
R. Plamondon	– Constable, CN Police, Montreal

And on behalf of the Union:

J. C. Morrison	– Counsel, London
P. Vickers	– General Chairman, Sarnia
G. Quesnel	– Local Chairman, Montreal
L. Boucher	– Witness
J. Chevalier	– Grievor

AWARD OF THE ARBITRATOR

This award concerns two heads of discipline: the assessment of twenty-five demerits for conduct unbecoming towards a Company officer and a further forty-five demerits for threats uttered to a Company officer.

The first incident relates to the assignment of Market Manager Jerome Lavoie to ride on the grievor's train to be trained with a view to being qualified in the operation of trains. On the day in question, October 3, 2007 Mr. Lavoie was introduced to Mr. Chevalier who responded in French, in what the Arbitrator translates as: "Ah, so you're the scab." When Mr. Lavoie explained that he was in fact employed in marketing the grievor answered "Yes, that's right, you're the scab."

Following a disciplinary investigation the grievor was assessed twenty-five demerits for his disrespectful conduct towards a Company officer.

The incident is not denied by the grievor, although it appears that he did apologize during the course of the disciplinary investigation. Unfortunately, his record does include at least one prior incident of having been disrespectful towards a supervisor for which he was assessed a deferred suspension of five days, in July of 2005. On the whole, and in particular in light of the grievor's admission of his error and his apology, I am satisfied that it is appropriate to reduce the penalty to twenty demerits, and it is so directed.

The second discipline assessed against the grievor, resulting in forty-five demerits and his dismissal, involved a confrontation between Locomotive Engineer Chevalier and a Company officer on February 19, 2008 at the yard office in St. Lambert. The material before the Arbitrator confirms that the grievor was standing in the doorway of Trainmaster Guy Bélanger's office waiting to speak with him while the latter was on the telephone. Supervisor Michel Lapierre then approached him from behind, apparently to advise him that he had obtained some rubber footwear for him. According to Mr. Lapierre's account when he called the grievor's name twice he received no response. He then tapped him on the shoulder with a pencil to get his attention.

It is not disputed that the grievor then turned in anger and uttered words to Mr. Lapierre to the effect that if he should ever touch him again he would be in need of a medical leave because he would "turn him upside down". It seems that the grievor then communicated his message to Mr. Bélanger. According to Mr. Bélanger's account a few moments later Mr. Chevalier stated to Mr. Bélanger that he had been hit in the back by Mr. Lapierre and that if Mr. Lapierre ever touched him again he would need medical care. According to Mr. Bélanger he then left, only to return some fifteen or twenty minutes later.

Upon his return to Mr. Bélanger's office Mr. Chevalier requested that the CN Police be called because he wished to file a complaint against Supervisor Lapierre for assault. CN Police were called and statements were taken from all concerned. It also appears that the Company filed a complaint with CN Police which resulted in a criminal charge of threats being made against Mr. Chevalier. It appears that that charge resulted in a preliminary peace bond with conditions which Mr. Chevalier respected, as a result of which the charge against him was eventually dismissed. Following the disciplinary investigation prompted by the incident, the Company assessed forty-five demerits for the grievor's inappropriate conduct and for making threats to a Company officer.

The Arbitrator is satisfied that the grievor did render himself liable to a serious measure of discipline by reason of his verbal threats to Supervisor Lapierre. I accept the testimony of Mr. Lapierre that he was profoundly shaken by the threats uttered by Mr. Chevalier and I also accept his evidence that he simply touched him on the shoulder lightly with a pencil to try to get his attention. While it might have been appropriate for the grievor to then remind Mr. Lapierre that he did not wish to be touched, there is no basis for the threat of physical harm which Mr. Chevalier chose to unleash upon Mr. Lapierre. The Arbitrator is also inclined to believe that there was an element of mischief in the grievor's insistence that the CN Police be summoned and that an investigation into a purported assault of him by Mr. Lapierre be pursued. While it is not necessary for the Arbitrator to comment on the grievor's motives and whether he was seeking to deflect attention from himself as a means of avoiding discipline, I am persuaded that the grievor grossly overreacted to his supervisor's action. It was also inappropriate conduct for him to elevate the matter into a police investigation. Nor can I accept the suggestion that the mere light toughing on the shoulder of the grievor by Mr. Lapierre was provocation in mitigation of Mr. Chevalier's actions.

The real issue is the appropriate measure of discipline in all of the circumstances. Unfortunately Mr. Chevalier does not have a positive disciplinary record and the culminating incident represents the third occasion on which he has openly demonstrated disrespect to a Company officer. In mitigation, it is to be noted that the grievor had twenty-

seven years of service at the time of the incidents and that prior to the first of the two infractions here under consideration his record stood at thirty demerits. In the Arbitrator's view, largely on the basis on the length of the grievor's service, this is an appropriate case for a reduction of penalty, albeit on conditions fashioned to protect the employer's legitimate interests.

The grievance is therefore allowed, in part. The Arbitrator directs that the forty-five demerits assessed against Mr. Chevalier for the incident of February 19, 2008 be removed from his record forthwith, and that he be reinstated into his employment without compensation for any wages and benefits lost and without loss of seniority. The period between his termination and his reinstatement shall be recorded as a suspension for the incident of February 19, 2008. However, the grievor's reinstatement is to be conditioned upon his accepting to undergo assessment and/or treatment for anger management following his reinstatement, should the Company so elect. The cost of any assessment and/or anger management program, not to exceed a reasonable limit, shall be borne by the grievor himself. The appropriate agency or consultant for anger management services shall be determined by agreement between the parties, and failing their agreement, by the Arbitrator.

December 14, 2009

(signed) MICHEL G. PICHER
ARBITRATOR