

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

**CASE NO. 3922**

Heard in Montreal Wednesday, 14 July 2010

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the assessment of a 76-day suspension to Locomotive Engineer G.M. Scott of Winnipeg for “conduct unbecoming an employee and insubordinate behaviour toward a supervisor during your tour of duty as a locomotive engineer on M 3164128 on February 28, 2010.”

**JOINT STATEMENT OF ISSUE:**

On February 28, 2010 Mr. Scott was assigned as the locomotive engineer on Train 316, which was delayed departing Transcona Yard as a result of mechanical difficulties with one of its locomotives. When approached by Trainmaster Ryan Wilson who inquired about the delay, Mr. Scott responded that he had been in contact with “all the right fucking people” and that Trainmaster Wilson should “just fuck off”. During a subsequent telephone conversation when Trainmaster Wilson advised Mr. Scott that he would be withheld from service pending a disciplinary investigation, Mr. Scott asked about Trainmaster Wilson’s years of service compared to his, stated that he knew his job and did not need to take orders from a “little fucking prick” like him and hung up the phone on Trainmaster Wilson.

The Company conducted an investigation of the incident and determined that Mr. Scott had been insubordinate and displayed conduct unbecoming an employee in his interactions with Trainmaster Wilson, and subsequently discharged him. On June 2, 2010, Mr. Scott’s discharge was modified to reflect a suspension from March 18 until June 2, 2010.

The Union contends that the suspension was excessive and failed to take into account all of the mitigating factors and that the Company did not prove insubordination or conduct unbecoming an employee. The Union requested that the Company reconsider the discipline assessed, and that Mr. Scott should be made whole for all lost wages and benefits.

The Company disagrees with the Union’s contentions.

**FOR THE UNION:**

**(SGD.) T. MARKEWICH**

FOR: GENERAL CHAIRMAN

**FOR THE COMPANY:**

**(SGD.) D. BRODIE**

FOR: VICE-PRESIDENT, HUMAN RESOURCES

There appeared on behalf of the Company:

- D. Criossan – Manager, Labour Relations, Prince George
- D. Brodie – Manager, Labour Relations, Edmonton

And on behalf of the Union:

- D. Ellickson – Counsel, Toronto
- B. Willows – General Chairman, Edmonton
- T. Markewich – Vice-General Chairman, Edmonton

### **AWARD OF THE ARBITRATOR**

The sole issue in this grievance is whether the Company was justified in ultimately imposing a 76-day suspension on Locomotive Engineer Scott for his insubordinate conduct.

The record confirms that Mr. Scott was involved in two confrontations with Trainmaster Ryan Wilson on February 28, 2010. It appears that as one of Mr. Scott's locomotives had an electronic problem, Mr. Wilson proceeded to Transcona to investigate, as the production coordinator had noted a delay in the departure of the grievor's train. Mr. Wilson recounts that when he arrived at Transcona and began to ask Engineer Scott what the problem was and why neither the production coordinator nor himself had been advised, Mr. Scott responded to him that he had "... been in contact with all the right fucking people and I should just fuck off."

Mr. Wilson then communicated with the production coordinator by telephone, indicating that he wished to remove the grievor from service. Following that consultation he advised the grievor and his crew that they were cancelled and he requested Locomotive Engineer Scott to call him when he returned to the booking in room. It does

not appear disputed that when Engineer Scott called Mr. Wilson from the booking room and the latter advised him that he was being held out of service for conduct unbecoming Mr. Scott responded by asking Mr. Wilson how many years of service he had with the Company, that the grievor knew his job and did not need to take orders from, "... a little fucking prick like me.", whereupon he hung up on his supervisor. Following a disciplinary investigation the grievor was discharged for "... conduct unbecoming of an employee and insubordinate behaviour toward a supervisor ... on February 28, 2010."

The notice of discharge provided to the grievor was dated March 18, 2010. On June 2, 2010 the Company wrote to Mr. Scott to advise that it had elected to reinstate his employment "... without pay or benefits by amending the discipline of discharge assessed, to a suspension without pay from March 18, 2010 until June 2, 2010." The sole issue in this grievance is whether the Company had just cause to effectively suspend the grievor for the period of time it did.

On the grievor's behalf the Union pleads the longevity of his service, being some thirty-two years, and points to stress in his personal life which, it submits, would have contributed to his outburst on the day in question. The Arbitrator appreciates the grievor's length of service and accepts that his personal life might be viewed as a relevant mitigating circumstance. However, in my view, that has already been fairly taken into account by the Company's own decision to reinstate the grievor. Unfortunately, for reasons he best appreciates, Mr. Scott confronted Mr. Wilson, on two separate occasions within the span of an hour and a half, with two separate statements

that were clearly offensive, dismissive and insulting. I have some difficulty concluding that in the face of that conduct towards a supervisor the Company was not entitled to consider that the grievor's continued employment under the direction of Mr. Wilson was no longer viable. After some considerable period of time, in light of mitigating factors including the grievor's length of service and his apology, the Company determined that reinstatement was appropriate. The Arbitrator has some difficulty in now second guessing the course of action taken by the Company in a case of such serious insubordinate conduct.

In the end, unfortunately, the grievor was the author of his own misfortune. I am not persuaded that a lengthy suspension was inappropriate in all of the circumstances. For these reasons the grievance must be dismissed.

July 19, 2010

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**