

A. Mielke	– Manager, Track Maintenance
C. De Re	– Supervisor, Track Renewal
M. Fitzpatrick	– Constable, CP Police
M. Goldsmith	– Labour Relations Officer, Calgary

And on behalf of the Union:

Wm. Brehl	– President, Ottawa
D. W. Brown	– Counsel, Ottawa
S. Brighton	– Local Chairman,
W. Phillips	– Local Chairman, Belleville

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that for a period of several months the grievor, Extra Gang Foreman Mike Pinsonneault of London, Ontario engaged in a bizarre and uncharacteristic pattern of behaviour. It appears that he took to sending text messages and telephone messages to supervisors. Some of the messages include statements such as “You’re a fucking loser”, “Screwball” and “Ha Ha!”. Disturbingly, some of the messages were threatening sent as one sent on March 10, 2009 reading “You one eye piece of shit I no [sic] were [were] you live.”

Following a disciplinary investigation the Company assessed forty demerits against the grievor, which resulted in his discharge.

If the facts related above were the whole story, the Arbitrator would readily sustain the grievor’s termination. However, there are other factors which must be carefully weighed. The grievor is a forty-four year old father of four who has been employed by the Company for twenty-five years. While his record is not without disciplinary blemish, the bulk of the discipline which he received in the past related

largely to attendance problems, failing to obtain first aid and errors in relation to track protection on two occasions. Significantly, there is simply no indication over the grievor's twenty-five years of employment of any behavioural problems, insubordination or disrespect toward other employees or supervisors. The Union's submission that in fact the grievor has always been a respectful and well-mannered employee appears to be borne out by the record as by personal statements of support filed in evidence.

What the record further discloses, however, is a substantial mitigating factor. It appears that in late 2008 and early 2009 Mr. Pinsonneault was subject to extremely stressful family problems stemming from medical and behavioural problems with two of his children. It is common ground that following his discharge he underwent therapy with a social worker of the John Howard Society, whose report confirms the stress which the grievor suffered and his improvement towards anger management.

On the whole, the Arbitrator is satisfied that the bizarre and uncharacteristic conduct engaged in by Mr. Pinsonneault, which is entirely out of keeping with his history of employment, stems from an isolated period of unusual stress. I am not satisfied that these events confirm the total failure of an ongoing viable employment relationship, given the grievor's subsequent progress.

On the whole I am satisfied that this is an appropriate case for a reduction of penalty by reason of the mitigating factors presented, albeit the grievor's return to work should be on conditions fashioned to protect the employer's legitimate interests.

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 or benefits lost. The grievor's reinstatement shall be subject to the Company's option to require that he continue to undergo anger management therapy for such reasonable period as the employer and the Union may agree is appropriate, and failing their agreement, is determined by the Arbitrator. Any failure by the grievor to accept or honour the conditions established may result in his termination.

September 20, 2010

(original signed by) MICHEL G. PICHER
ARBITRATOR