CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3937

Heard in Montreal, 16 September, 2010

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE MAINTENANCE OF WAY EMPLOYEES DIVISION

DISPUTE:

Dismissal of Mr. Mike Pinsonneault.

JOINT STATEMENT OF ISSUE:

On April 14, 2009 the Company issued two Form 104s to the grievor, Mr. Mike Pinsonneault. The first assessed him with 40 demerits for his alleged "repeated and deliberate issuance of inappropriate, threatening and undesired text messages and voicemails to various Supervisors and Managers." The second advised him that he was being dismissed for an accumulation of demerits. A grievance was filed.

The Union contends that the discipline assessed the grievor was excessive and unwarranted in the circumstances.

The Union requests that the grievor be reinstated into Company service forthwith without loss of seniority and with full compensation for all wages and benefits lost as a result of this matter.

The Company contends that the discipline assessed to the grievor was warranted and justified under the circumstances and that the inappropriate behaviour demonstrated by the grievor has continued on multiple occasions post-discharge.

The Company denies the Union's contentions and declines the Union's request.

FOR THE UNION:			
(SGD.) WM. BREHL			
PRESIDENT			

FOR THE COMPANY: (SGD.) M. THOMPSON LABOUR RELATIONS OFFICER

There appeared on behalf of the Company:

M. Thompson	 Labour Relations Officer, Calgary
K. Hein	 Manager, Labour Relations, Calgary

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
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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

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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.

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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