

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

CASE NO. 4021

Heard in Edmonton, Alberta, Thursday, 16 June 2011

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL
WORKERS UNION OF CANADA – COUNCIL 4000**

DISPUTE:

The 28-day suspension assessed by the Company against Ms. S. Scott for the alleged harassment of a fellow employee.

JOINT STATEMENT OF ISSUE:

The Union contends that the Company failed to adhere to its own policy entitled "Human Rights Policy – Harassment Free Environment". By disregarding its own policy and the steps that are to be taken as outlined within this policy, the Company deprived Ms. Scott of a fair and reasonable opportunity to properly defend herself against the alleged accusations of harassment. Furthermore, the Union contends that the quantum of discipline assessed Ms. Tomashewsky was arbitrary, excessive and severe given the mitigating circumstances in this case. The Union requests that Ms. Scott be compensated for all lost wages and benefits during the period of her suspension.

The Company maintains that the investigation procedures in the instant case were consistent with Company policy and the assessment of discipline was appropriate in that the Company imposes sanctions where harassment is evident, whether it is viewed as intentional or unintentional. For these reasons the Company has declined the grievance.

FOR THE UNION:

(SGD.) R. SHORE
FOR: PRESIDENT

FOR THE COMPANY:

(SGD.) R. CAMPBELL
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

R. Campbell	– Manager, Labour Relations, Winnipeg
P. Payne	– Manager, Labour Relations, Edmonton
D. Fuller	– Supervisor, TRS, Edmonton

There appeared on behalf of the Union:

B. Kennedy	– President, Edmonton
R. Shore	– Regional Representative, Vancouver
L. Tomashewsky	– Train Movement Clerk, Edmonton
S. Scott	– Grievor

AWARD OF THE ARBITRATOR

The facts in relation to this grievance are fully recounted in **CROA&DR 4020**. For the reasons related therein, I am satisfied that the grievor, Edmonton Control Clerk Sara Scott, knowingly and deliberately described a fellow employee as being stupid or, which in effect is the same thing, following a stupid course of action in her work. Her comment was made in a loud voice, overheard by others. Coupled with the generally unfriendly attitude she had exhibited towards the employee in question, who is acknowledged to be a sensitive person, that employee was reduced to tears and to the contemplation of her own resignation to put an end to what she viewed as continuing harassment aimed towards her.

For the reasons reflected in **CROA&DR 4020** I am compelled to the unfortunate conclusion that Ms. Scott was less than candid in her answers during the course of her disciplinary investigation. At first she suggested that she was entirely unaware that she had caused any distress to her fellow employee, Ms. Zuk, until she received a notice to attend for an investigatory statement. However, later in her statement she acknowledges that she had telephoned a fellow employee the same day as the incident to relate that she had made Ms. Zuk cry. Most disturbingly, there is nothing in any of the statements of the grievor to suggest that she felt she did anything wrong. Commenting on her fellow employee's distress, she stated: "I thought it was an overreaction to what I had said."

Towards the end of her investigatory statement Ms. Scott makes the following comment: "I realize now that Ms. Zuk took offence to what was said and was upset." In my view that is a less than honest answer. The whole of the record before me reveals that shortly after the incident Ms. Scott was confronted by another employee about her rudeness to Ms. Zuk and was well aware that she had reduced her to tears, a fact which she related to another employee by telephone the same day.

In the circumstances I consider the grievor's overall lack of candour to be aggravating. I am compelled to agree with the Company that a more serious degree of discipline is appropriate with respect to Ms. Scott for her harassment of Ms. Zuk than for her fellow employee L. Tomashewsky (CROA & DR 4020). Even if it is true that Ms. Zuk is a sensitive individual, that did not give Ms. Scott the licence to insult and harass her, much less to do so remorselessly.

There is one mitigating element to consider, however. This would appear to be a first offence for discipline. In the circumstances I am satisfied that a fourteen day suspension would be sufficient to convey the necessary rehabilitative message to the grievor as to the seriousness of her conduct. The grievance is therefore allowed, in part. The grievor's record shall be amended to reflect a fourteen day suspension and she shall be compensated for the difference in wages and benefits accordingly.

June 21, 2011

(signed) MICHEL G. PICHER
ARBITRATOR