

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4066

Heard in Montreal Wednesday, 14 December 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discharge of Locomotive Engineer François Boulet for conduct unbecoming an employee on June 22, 2011.

JOINT STATEMENT OF ISSUE:

Mr. Boulet was a locomotive engineer from Hornepayne. On June 21, 2011 he was the engineer on train Q48131 20. He complained that the toilet on the engine smelled awful and said was making him sick but did not need medical attention. When he arrived at the terminal of Hornepayne, he spoke to Trainmaster Dion about the condition of the toilet on the engine and about the Company failure to address his concerns. He then went home and walked his dog. Following this, he returned to the Company offices with a bag of his dog's feces. He went into the Trainmaster's office and asked for the keys to his (the trainmaster's) truck and explained that he wanted to leave a bag of feces in the trainmaster's truck. He then was asked to leave and he immediately left the premises. The Union asserts that no discipline is warranted in this situation.

The Company disagrees with the Union's position and takes the position that in light of all of the circumstances, including his past work record, that discharge was warranted.

FOR THE UNION:
(SGD.) P. VICKERS
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.) M. MARSHALL
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Gagné	– Sr. Manager, Labour Relations, Montreal
A. Daigle	– Manager, Labour Relations, Montreal
D. Larouche	– Manager, Labour Relations, Montreal
D. Dickhoff	– Trainmaster, Transportation, Toronto
R. Dion	– Trainmaster, Transportation, Hornepayne

There appeared on behalf of the Union:

P. Vickers	– General Chairman, Sarnia
P. Boucher	– Coordinator, Arbitration Department, Belleville
M. Boulet	– Legislative Representative, Montreal
B. Willows	– General Chairman, CN Lines West, Edmonton
F. Boulet	– Grievor

AWARD OF THE ARBITRATOR

The grievor, Locomotive Engineer François Boulet, was discharged from his employment of twenty-seven years for confronting his supervisor with a bag of dog feces.

The record discloses that on June 21, 2011, the grievor operated train 48131 20 from Capreol to Hornepayne. During the course of that trip he complained on some three occasions by radio to the Rail Traffic Controller about the condition of the toilet on the locomotive unit. By reason of the unclean condition of the toilet he was apparently subjected to an extremely strong and unpleasant odour in the cab of the locomotive.

It appears that the grievor operated his train to Oba where he and his crew disembarked at approximately 03:50 hours. They were then transported by road to Hornepayne, where Mr. Boulet arrived at approximately 06:35, going off duty at 06:40. At that time the grievor confronted his supervisor, Trainmaster Robert Dion. He complained angrily that Mr. Dion had done nothing to resolve the problem of the odorous locomotive. In what I am satisfied was a loud and angry voice he commented, in part, to his supervisor: “How would you like it if I put shit inside your truck and [you] had to sit there with it for hours?” It appears that the grievor did not await Mr. Dion’s

response and simply left the station. Nor does it appear disputed that Mr. Dion did not say anything, although the Union's representatives suggest that he smirked or chuckled at the grievor's comments.

It appears that the grievor then went home, where he walked his dog. During the walk he picked up his dog's fecal droppings in a plastic bag. For reasons he best appreciates, he then thought it appropriate to take the bag of dog feces back to Trainmaster Dion. At approximately 07:18 hours he returned to the yard office where he found Mr. Dion's office empty. He knocked at the door of Trainmaster Dan Dickhoff, where both Mr. Dion and Mr. Dickhoff were then working together in Mr. Dickhoff's office. As Mr. Dion opened the door the grievor asked him where his truck keys might be. When Trainmaster Dion asked him why he wanted his truck keys the grievor held up the bag of dog feces in front of him and responded "So I can put this bag in it and let it sit there for a few hours so you'll know what I went through." According to the account of the trainmasters, Mr. Boulet held the bag of feces approximately a foot from Mr. Dion's face and both Mr. Dion and Mr. Dickhoff could clearly smell the foul odour of the dog droppings. It does not appear disputed that Mr. Dickhoff at that point instructed the grievor to leave, which he did. As he left Mr. Boulet made the comment "You need to learn to respect the employees."

A disciplinary investigation ensued after which Mr. Boulet was discharged for conduct unbecoming an employee, based on his two encounters with Mr. Dion. In the Arbitrator's view there can be no doubt but that the grievor made himself liable to

discipline. The real issue is the appropriate measure of discipline in all of the circumstances.

The Union's representative stresses what he maintains was in effect provocation of the grievor. He submits that notwithstanding the grievor's repeated complaints about the condition of the toilet in his locomotive, Mr. Dion, who was apparently aware of the situation, made no attempt to substitute the locomotive or to allow the grievor to change the positioning of locomotives on his train to use a less offensive operating locomotive. He submits that when the whole of the evidence is considered, there was a contribution to what occurred on the part of the Company's representatives.

I have some difficulty with that submission. Firstly, while the grievor obviously complained vociferously to the Rail Traffic Controller, there is nothing in the record to suggest that he attempted to communicate directly with Trainmaster Dion or any other supervisor to obtain instructions or seek relief for the situation in which he found himself. If he considered that he was confronted with a hazardous situation which caused risk to his health he also had the option of refusing unsafe work under the provisions of the **Canada Labour Code**. I am less than impressed with the suggestion of the Union's representative that he declined to pursue that avenue because he had previously attempted to do so, without success, having apparently attracted discipline in that regard on a prior occasion.

Unfortunately, the record before the Arbitrator confirms that Mr. Boulet has garnered an unenviable history of confrontation with authorities and insubordination over the years. On two prior occasions he was terminated for conduct unbecoming an employee. On the first occasion, in 2007, he was reinstated into his employment by agreement, subject to a 226 day suspension. His second discharge was considered by this Office in **CROA&DR 3725**. In that case it was found that the grievor had spoken by radio with the Assistant Manager of the Rail Traffic Control Centre in Toronto after having experienced some frustration by reason of operational delays which he had encountered. Among other things, he said to that supervisor, speaking in French, words to the effect of: "I hope you crash your car on the way home, my friend." The Arbitrator found that that comment was clearly deserving of discipline. Although he reduced the penalty and reinstated the grievor without compensation, he commented: "The grievor, nevertheless, should understand that his employment is in serious jeopardy and that a further transgression for conduct of this kind could end his employment with the Company." Those words, written on February 17, 2009 apparently had no impact on the grievor on the morning of June 22, 2011.

In fact, an overall review of the grievor's record confirms that he was disciplined on no less than five prior occasions for conduct unbecoming an employee, insubordination or abusive language towards either a supervisor or a fellow employee. In effect, that record confirms the assessment of demerits on two separate occasions and suspensions in the three most recent instances.

There is a limit to what an employer must endure. Even accepting that the grievor had reason to be angry for having to operate a locomotive with an unsanitary toilet, it scarcely needs to be said that it was highly inappropriate for him to engage in verbal abuse of his supervisor as he did upon his return to Hornepayne, much less to then, after ample time for a cooling off period, to return to the workplace to confront his trainmaster with a bag of dog feces. The regrettable conclusion which I am compelled to draw is that with respect to the importance of respect and civility in a working relationship Mr. Boulet does not get it. Notwithstanding the application of progressive discipline to him over many years by the Company, there appears to have been no real progress with respect to this tragic flaw in his recurring conduct. I am compelled to conclude that by his ill-considered actions on June 22, 2011 and the calculated and deliberate presentation of a bag of dog feces to his trainmaster, the grievor irrevocably broke the bond of mutual respect and civility inherent in the employment relationship. Given his prior disciplinary record for similar infractions, I can see no reason to substitute a lesser penalty in the circumstances of the instant case.

The grievance must therefore be dismissed.

December 19, 2011

(signed) MICHEL G. PICHER
ARBITRATOR