

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4086**

Heard in Montreal, Tuesday, 14 February 2012

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Termination of the probationary employment of Conductor Trainee D. Cross on November 19, 2010.

COMPANY'S STATEMENT OF ISSUE:

On October 18, 2010, Conductor Trainee Cross was hired with the Company and started her training program as a conductor.

On November 19, 2010, following three weeks of classroom training and upon completion of Ms. Cross' first two (2) weeks of practical field training, the Company determined that Ms. Cross was unsuitable for the position of conductor. The Company met with the grievor, informed her of the Company's decision and provided her with a letter confirming the Company's decision.

The Union contends that Conductor Trainee Cross was terminated as a result of her gender. The Union requests that the grievor be reinstated into the Conductor Trainee Program and be made whole.

The Company disagrees with the Union's contentions.

**FOR THE COMPANY:
(SGD.) D. CROSSAN
FOR: DIRECTOR, LABOUR RELATIONS**

There appeared on behalf of the Company:

D. Crossan	– Manager, Labour Relations, Prince George
K. Morris	– Sr. Manager, Labour Relations, Edmonton

P. Payne	– Manager, Labour Relations, Edmonton
M. Farkough	– General Manager, Surrey
D. VanCauwenbergh	– Director, Labour Relations, Toronto
R. Worsfold	– Manager, Risk Management, VCR
R. Jordan	– Instructor, Rules

There appeared on behalf of the Union:

K. Stuebing	– Counsel
B. R. Boechler	– General Chairman, Edmonton
J. Robbins	– General Chairman, CN Lines Central, Sarnia
B. Willows	– General Chairman, LE, Edmonton
D. Cross	– Grievor

AWARD OF THE ARBITRATOR

This award concerns the termination of a probationary employee. As the jurisprudence of this Office confirms, the standard for the review of such a termination does not place upon the Company the burden to establish just cause. Rather, it must demonstrate that the action taken was not arbitrary, discriminatory or in bad faith. That is reflected in the following passage from CROA 1568, a prior award involving these same parties:

It is common ground that the standard of proof required to establish just cause for the termination of a probationary employee is substantially lighter than for a permanent employee. The determination of “suitability” obviously leaves room for a substantial discretion on the part of the employer in deciding whether an employee should gain permanent employment status. ... It is sufficient to say that, at a minimum, the Company’s decision to terminate a probationary employee must not be arbitrary, discriminatory or in bad faith. It must be exercised for a valid business purpose, having regard to the requirements of the job and the performance of the individual in question.

At the arbitration hearing two witnesses were called on behalf of the Company. Manager, Risk Management, Mr. Roger Worsfold and Rules Instructor Rick Jordan gave evidence of their observations of the grievor’s work, particularly during the “boot camp” portion of practical training. It is their evidence that they observed Ms. Cross

being reluctant to engage in entraining at detraining exercises on moving equipment, that she did not exercise proper protocols on the radio, that she exhibited confusion in the routing of cars under her charge and that she stationed herself improperly between pieces of equipment, among other failings.

The grievor denies that she committed any of the errors charged against her, with the possible exception of not having opened a coupling knuckle on one occasion. She, along with her counsel, stresses that she received no negative feedback or any indication that she was not working to proper standards.

With respect, there is a limit to an employer's obligation in evaluating an employee during a period of training or instruction. There is no obligation upon the employer to maintain a daily score card to be shared with the employee who is in an initial training period, albeit there is obviously a common sense obligation for the training employer representative to correct any serious errors which may be observed. In the case of the grievor, however, the types of things observed by the Company's training officers included such things as confusion on the part of the grievor and an apparent failure to appreciate the operational process which had been conveyed to her in a classroom setting. In the Arbitrator's view it is understandably difficult for the Company to correct flaws which appear to be part of the individual's own makeup or their failure to appreciate the elements of safe and effective operations in the field.

Can it be said that the discharge of the grievor was arbitrary, discriminatory or in bad faith? More specifically, as alleged by the Union, does the evidence indicate that the grievor was targeted for discharge by reason of the fact that she is a female, contrary to the **Canadian Human Rights Act**? After a careful review of all of the evidence, I can find no evidence to suggest that the grievor's gender was a factor in the decision to terminate her services during her probationary period. Nor can I find any responsible basis to conclude that the decision to terminate Ms. Cross was taken in a manner that was arbitrary, discriminatory or in bad faith. As is reflected in the record before me, a number of instructors and supervisors were consulted with respect to the quality of the grievor's work and the difficulties which she was apparently encountering during the boot camp portion of training. I am satisfied that those observations, and the ultimate conclusion to terminate the grievor's employment during the probationary period, were based solely on the observation of her performance and the judgement that she did not appear suited to the work of a railway conductor, as reflected in the testimony of both Mr. Worsfold and her instructor, Mr. Rick Jordan.

For all of the foregoing reasons the grievance must be dismissed.

February 20, 2012

(signed) MICHEL G. PICHER
ARBITRATOR