

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION  
CASE NO. 4118**

Heard in Montreal, Tuesday, 10 July 2012

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the assessment of a twenty-five (25) day suspension to Locomotive Engineer K. MacWhirter for "Conduct unbecoming while working as Locomotive Engineer on train Q11451-26, October 27, 2011."

**JOINT STATEMENT OF ISSUE:**

On October 27, 2011, during his tour of duty as the Locomotive Engineer on Train Q11451 26, Mr. MacWhirter was reported by his conductor to have threatened to "stab him".

The Company conducted an investigation of the incident and determined that Locomotive Engineer MacWhirter did display conduct unbecoming of an employee by threatening his fellow employee.

The Union contends that the suspension was excessive and completely unwarranted under the circumstances, and requested that the discipline be either expunged, or reduced to a level more commensurate with Mr. MacWhirter's role in the incident, and that he be made whole for all lost wages and benefits. The Union also alleged that the investigation was conducted in a manner that was not fair and impartial, and allegedly in violation of Article 86 of Agreement 1.2.

The Company disagrees with the Union's contentions.

**FOR THE UNION:**

**(SGD.) T. MARKEWICH**  
**FOR: GENERAL CHAIRMAN**

**FOR THE COMPANY:**

**(SGD.) D. BRODIE**  
**FOR: VICE-PRESIDENT, HUMAN RESOURCES**

There appeared on behalf of the Company:

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|--------------------|---|
| P. Payne           | – Manager, Labour Relations, Edmonton     |
| K. Morris          | – Sr. Manager, Labour Relations, Edmonton |
| D. Van Cauwenbergh | – Director, Labour Relations, Toronto     |
| D. Brodie          | – Manager, Labour Relations, Edmonton     |
| T. Brown           | – General Manager, Montreal               |

There appeared on behalf of the Union:

- |              |                                       |
|--------------|---------------------------------------|
| K. Stuebing  | – Counsel, Toronto                    |
| B. Willows   | – General Chairman, Edmonton          |
| T. Markewich | – Sr. Vice-General Chairman, Edmonton |

### **AWARD OF THE ARBITRATOR**

Having reviewed the material I am satisfied that the grievor, during a short verbal outburst, did state to his conductor, Andrew Wasylenchuk, that he should not touch certain controls in the locomotive, and that if he did he would “stab” him. Following a disciplinary investigation the Company found that the alleged threat had in fact been made and assessed the grievor a twenty-five day suspension.

The material before me would indicate that there was genuine degree of fear experienced on the part of the conductor. He reported the threat to the Chief Rail Traffic Controller, as a result of which arrangements were made to remove both the conductor and the locomotive engineer from the assignment, at a siding where it was then situated, and substitute another crew. While it is true that it was the Company’s suggestion that the conductor could be extracted from the situation, and not his initial request, his subsequently expressed wish to take advantage of that opportunity is, in my view, consistent with an honest concern on his part for his own safety.

During the course of the disciplinary investigation the grievor stated that he could not recall precisely what it is that he said to his conductor. He says that he spoke out of anger because he was himself then on the ground to do a roll by inspection of a passing train while Conductor Wasylenchuk remained in the locomotive, arguably not performing the same task as he was required to do. It appears that the conductor had turned on the headlights of the locomotive, thereby making it difficult for Locomotive Engineer MacWhirter to see as he was attempting to inspect the passing train.

In my view the Company had every reason to be concerned for what appears to have been a serious personal threat, the nature of which justified the ending of the assignment and the dispatching of police to the location. While I am inclined to accept that what occurred was an isolated outburst, prompted by anger, and not likely to have resulted in any further action on the part of Mr. MacWhirter, the fact remains that there can be no place in the workplace for threats of physical violence, whether made against a fellow employee or against a supervisor. The tone and words chosen by Mr. MacWhirter did not give his conductor the luxury of analysing whether there was real seriousness in his threat or whether indeed he was or was not possessed of a weapon that could carry it out. Nor am I impressed with the candour of the grievor who professes to have no precise recollection of the exact words he used. As I accept the conductor's evidence that he did threaten to stab him, so unusual a statement would not easily be forgotten.

In all of the circumstances I am satisfied that this is not an appropriate case to interfere with the discipline assessed, and the grievance must therefore be dismissed.

July 17, 2012

**(signed) MICHEL G. PICHER**

ARBITRATOR