

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4207

Heard in Montreal, May 15, 2013

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED STEELWORKERS UNION – LOCAL 2004

DISPUTE:

Mr. John Vukoja was assessed 30 demerits for conduct unbecoming of a CN employee.

JOINT STATEMENT OF ISSUE:

On June 1, 2012 Mr. John Vukoja was assessed 30 demerits for conduct unbecoming a CN employee. On July 3, 2012, the company conducted a formal investigation with Mr. Vukoja for the following reason: "Circumstances surrounding alleged altercation in parking lot at 290 Toronto St. on June 1, 2012".

The Union filed a grievance regarding this matter in accordance with Article 18, Appendix II, and of agreement 10.1. As well as Article 1.5, archived Appendix VII, CN Code of Conduct, CN Harassment Policy, the Canadian Human Rights Act and the Canada Labour Code. The Union contends that the investigation was not conducted in a fair and impartial manner. The Union requested that the demerits be removed from the grievor's file and that an investigation immediately take place regarding the harassment raised by the Grievor.

The Union and Company has met to discuss this grievance in Joint Conference in on October 24, 2012.

The Parties have not been able to resolve the dispute to date.

FOR THE UNION:

(SGD.) M. Piché

USW Staff Representative

FOR THE COMPANY:

(SGD.) S. Blackmore

Manager Labour Relations

There appeared on behalf of the Company:

S. Prudames	– Manager Labour Relations, Toronto
S. Grou	– Senior Manager, Labour Relations, Montreal
J. Vieira	– Senior Manager Engineer, Mimico
L. Clark	– Track Supervisor Engineer, Mimico

There appeared on behalf of the Union:

M. Piché	– Staff Representative, Toronto
J. Vukoja	– Grievor, Sudbury

AWARD OF THE ARBITRATOR

The material before the Arbitrator, including clear videotape evidence, confirms that the grievor Mr. John Vukoja, did become involved in a confrontation with a fellow employee in the engineering parking lot at 290 Toronto street, in Toronto on June 1, 2012. It appears that the grievor's truck was parked in the driving area of a parking lot and its door was opened, arguably obstructing the passage of another Company truck driven by another extra gang foreman, Mr. Adam Lucas. When Mr. Lucas sounded his horn and gestured to the grievor to close his truck door, the latter complied. However, as Mr. Lucas' truck passed by him Mr. Vukoja kicked the side door of the Mr. Lucas' truck. The Company's estimate, which the Arbitrator accepts as correct, is that the damage to the door required approximately \$1,000.00 to repair.

The Union raises objections to a number of procedural issues in relation to the disciplinary investigation conducted by the Company. Among other things it objects to the fact that the grievor's own supervisor was present during the investigation, that the investigation itself was conducted on July 3, 2012, approximately a month after the incident and that the Company conducted a separate investigation of Mr. Lucas without notice to the Union and without convening a supplementary investigation to allow the grievor to respond to any statement made by Mr. Lucas. Additionally, the Union's representative draws to the Arbitrator's attention what he characterises as a long standing relationship of harassment of the grievor by Mr. Lucas, a matter which he submits was brought to the Company's attention and was not properly dealt with.

I do not consider that the harassment question is one that is properly before me in this grievance, save as a matter of general background. This grievance is not relation to harassment, but rather is against the assessment of demerits for conduct unbecoming. It may be noted that the Union also objects to the phrase "conduct unbecoming" as being too vague in the discipline ultimately assessed to the grievor.

I cannot sustain any of these procedural and technical objections raised by the Union. Firstly, it appears that there were breaks in the grievor's service during the month of June of 2012. As is not uncommon at that time of year, a delay in undertaking the investigation was occasioned by the availability of persons involved. Nor, in my view, is a thirty day delay unreasonable in these circumstances.

The Union can point to no provision of the collective agreement that would prevent the grievor's own supervisor from being an attendant at the investigation. The Arbitrator accepts the Company's explanation that she was there for training purposes and was also utilized as the recording scribe. She did not herself conduct the investigation nor, it seems, participate actively in it.

Nor can I find any violation of Article 18.2 of the collective agreement which governs the conduct of formal investigations. Article 18.2 (d) provides as follows:

Where an employee so wishes an accredited representative may appear with him at the hearing. Prior to the commencement of the hearing, the employee will be provided with a copy of all the written evidence as well as any oral evidence which has been recorded and which has a bearing on his involvement. The employee and his accredited representative will have the right to hear all of the evidence submitted and will be given an opportunity through the presiding officer to ask questions of the witnesses (including Company Officers where necessary)

whose evidence may have a bearing on his involvement. The questions and answers will be recorded and the employee and his accredited representative will be furnished with a copy of the statement.

The provisions of the above article are, in my view, to be distinguished from others found within the railway industry. There are collective agreements which expressly provide to an employee the right to attend the investigation of another individual whose statement may have a bearing on the first employee's responsibility. That is clearly not a right accorded under the provisions of article 18.2 of the instant collective agreement. It is also noteworthy that in fact a brief written statement made by Mr. Lucas was filed to the grievor's attention at the outset of his own investigation.

For the above reasons, therefore, I am satisfied that the Union has not demonstrated any violation of the Company's obligation to provide a fair and impartial investigation in keeping with the requirements contemplated under Article 18.2 of the Collective agreement.

The only real issue remaining is the measure of discipline assessed against the grievor. With respect to that question I believe that there is mitigating material to take into consideration. Firstly, I do accept, as related by the Union's representative that there was a relationship of ongoing animosity between the grievor and Mr. Lucas. While I cannot condone the actions of the grievor in directing a kick towards Mr. Lucas' truck, I cannot dismiss out of hand the suggestion of the Union's representative that the grievor had long felt himself harassed by Mr. Lucas, a matter upon which he had made specific complaint to his supervisors.

A separate mitigating factor in the instant case is the grievor's prior record and long service. Mr. Vukoja has more than thirty-one years of service with the Company, and has had a relatively positive disciplinary record. It does not appear disputed that he had not had any discipline whatsoever for a period of close to twenty years at the time of the incident here under review.

While I can appreciate the Company's concern that during the course of his investigation statement the grievor did not appear to take responsibility for having done any wrong, he did at the hearing acknowledge that he was in error that day. On the whole, therefore, I am satisfied that it is appropriate to reduce the discipline assessed against the grievor, albeit to remain at a relatively serious level. Not only did the grievor damage the Company's property, but he did so in what can only be described as an act of violence which does justify a serious degree of discipline.

The grievance is therefore allowed, in part. The Arbitrator directs that the discipline assessed against Mr. Vukoja be reduced to twenty demerits.

May 17, 2013

MICHEL G. PICHER
ARBITRATOR