

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4208

Heard in Montreal, May 15, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAILWAY CONFERENCE

DISPUTE:

Appeal of the Company's decision to terminate the employment of Conductor D. Gauvin.

JOINT STATEMENT OF ISSUE:

On July 25, 2008, Conductor Gauvin's employment was terminated by the Company for accumulation of demerits following an assessment of 45 demerits for "conduct unbecoming an employee of Canadian Pacific, as evidenced by your repeated inappropriate and unacceptable behavior while working as a conductor in passenger service and your harassing and sexually implicit comments directed to a 13 year old girl while working as a conductor on the passenger assignment 85V, on July 10th, 2008. A violation of the Company's Harassment and Discrimination Policy (second offence)."

The Union contends that there are no grounds for discipline in the circumstances and that the penalty of discharge is unjustified and unwarranted. In the alternative, it is the Union's position that the penalty of 45 demerits (resulting in Conductor Gauvin's termination) is excessive and contrary to the Collective Agreement.

The Union requests that Conductor Gauvin be reinstated without loss of seniority and benefits, and that he be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees and denies the Union's request.

FOR THE UNION:

(SGD.) W. Apsey

Vice General Chairperson

FOR THE COMPANY:

(SGD.) M. Chernenkoff

Labour Relations Officer

There appeared on behalf of the Company:

M. Chernenkoff

– Labour Relations Officer, Calgary

M. Thompson

– Manager Labour Relations, Calgary

D. Homphrey

– Trainmaster, Toronto

B. Sly

– Director Labour Relations, Calgary

J. Dorais

– Director Crew Resources, Calgary

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
B. Hiller	– General Chairman, Toronto
W. Apsey	– Vice General Chairman, Smith Falls
B. Ferguson	– Local Chairman, Chapleau
B. Brunet	– General Chairman, Montreal
D. Gauvin	– Grievor, Chapleau

AWARD OF THE ARBITRATOR

I am satisfied that during the course of his tour of duty on passenger assignment 85V, a Budd Car Service in Northern Ontario, on July 10, 2008 the grievor did engage in conduct unbecoming. The evidence confirms that Mr. Gauvin engaged in a conversation with Baggage man Richard Dew in a passenger car. During that conversation Mr. Gauvin made a comment in respect of a thirteen year old girl who was travelling alone, stating in a loud voice “that she would be good for at least eight children”. It appears that shortly thereafter, when he walked by her, he made a comment that he was “just trying to figure out your weight”. It further appears from the record that Mr. Gauvin had also made a comment to the young lady to the effect that Mr. Dew would be trying to pick her up.

There can be no doubt but that these comments made the young lady in question extremely uncomfortable. Her subsequent report of the events to her parents prompted a strong letter of protest from her father. Following these events a disciplinary investigation was conducted and the grievor’s employment was terminated following the assessment of forty-five demerits for the reasons related in the joint statement of issue.

I am satisfied that the grievor clearly crossed a line in his verbal comments both in the presence of and directly towards the thirteen year old female passenger. He knew, or reasonably should have known, that as a Conductor it was his duty to provide comfort and protection to all passengers and that remarks with a sexual undertone were plainly not in keeping with that obligation. In the result, I am satisfied that the grievor did render himself liable to a serious degree of discipline.

The question then becomes the appropriate disciplinary outcome. The grievor, who is fifty-seven years of age, has over twenty years of service with the Company. While his disciplinary record is not without blemish, this appears to be the first occasion in which he engaged in improper behaviour in relation to a passenger. A psychological analysis of the grievor, performed by Dr. Michel A. S. Larivière, and its related report dated November 28, 2012 identifies certain problems with respect to personality patterns manifested in Mr. Gauvin's conduct, which the report brands as "maladaptive methods of relating". The report gives a number of recommendations for him to be able to improve his relational conduct through cognitive strategies and anxiety reduction.

On the whole, I am satisfied that there are mitigating factors sufficient to suggest an alternative disciplinary outcome. While I fully understand the concerns of the employer with respect to the grievor working in passenger service following the incident here under review, it would appear that there is an alternative by which the grievor could continue productive employment.

The grievance is therefore allowed, in part. I direct that the grievor be reinstated into his employment forthwith, without compensation for any wages or benefits lost. The grievor's reinstatement shall be conditioned upon his accepting, at the discretion of the Company, to be precluded from working in any form of passenger service and being restricted to work in freight service. Any possible return of the grievor to passenger service shall be entirely at the discretion of the Company.

May 17, 2013

MICHEL G. PICHER
ARBITRATOR