

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4238**

Heard in Montreal, September 12, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the dismissal of Rail Traffic Controller Inderjit Basra for conduct unbecoming.

JOINT STATEMENT OF ISSUE:

On November 8, 2012 Rail Traffic Controller Inderjit Basra attended an investigation concerning his conversation with a Track Supervisor on October 24, 2012. Following this investigation, the company dismissed RTC Basra on November 14, 2012 for conduct unbecoming due to his violation of Company Policy H&S 4340 and procedure H&S 5340 - Violence in the Workplace.

The Union contends that the dismissal RTC Basra was excessive and not progressive and that there are mitigating circumstances that need to be considered. The Union requests that RTC Basra be reinstated without loss of seniority and be made whole for all lost wages and benefits.

The Company disagrees and denies the Union's request.

FOR THE UNION:
(SGD.) S. Brownlee
General Chairperson

FOR THE COMPANY:
(SGD.) M. Thompson
Manager Labour Relations

There appeared on behalf of the Company:

D. Freeborn	– Director Labour Relations, Calgary
D. Guerin	– Director Operations Center, Calgary
G. DeCiccio	– Senior Vice President Operations, Calgary
B. Sly	– Director Labour Relations, Calgary

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
S. Brownlee	– General Chairperson, Stoney Plain
C. Clark	– Local Chairperson, Montreal

K. Essery	– Vice General Chairperson, Calgary
D. Able	– General Chairperson, Calgary
G. Edwards	– Senior Vice General Chairperson, Calgary
I. Basra	– Grievor, Calgary

AWARD OF THE ARBITRATOR

The record confirms that Rail Traffic Controller Basra worked as the Cascade Subdivision rail traffic controller during the course of his assignment on October 24, 2012. During that tour of duty he received a phone call from Engineer Services Supervisor Barry Monkman. It is common ground that Mr. Basra was then frustrated with changes being implemented to the network management centre, which was going to have a negative impact on his working schedule and days off. During the course of his conversation with Mr. Monkman he spoke extensively about his frustration with respect to the changes being made and during that conversation made the following remarks : “I’m buying a gun. I can do whatever the fuck I want, not going to get people senior than me. I’m going to make a difference. If I’m going to do something like that I’m going to make a difference around here. I may be leaving, but I’ll make it a little better for everyone else”. Following an investigation, the grievor was terminated for conduct unbecoming.

Counsel for the Union submits that the grievor’s comments must be viewed in context. He stresses that the exchange between the grievor and Supervisor Monkman was laced with lighthearted banter and humour, based largely on the grievor’s frustration with a number of facts concerning the workplace. He argues that the

comments were made in a jesting manner and should not be construed as a threat nor anything more serious than poor judgement in the grievor's choice of words.

It appears that the grievor's remarks were heard during random audit of the RTC communication system. Following initial police involvement and a subsequent disciplinary investigation the grievor was dismissed for conduct unbecoming an employee as reflected in the Form 104 which was issued to him which reads as follows :

Please be advised that you have been dismissed from Company services for the following reason(s): for conduct unbecoming a Canadian Pacific employee as evidenced by your inappropriate and disturbing comments made during a phone conversation with a Company employee wherein you indicated your intent to purchase a firearm for the purpose of making a difference and improving the workplace, a violation of Company Policy H&S 4340 and procedure # H&S 5340-Violence in the Workplace, while employed as the Cascade Rail Traffic Controller on October 24, 2012, in Calgary, Alberta.

The Arbitrator must agree with the Company that any threat of gun violence must be taken extremely seriously. In that regard the following comments of this Office appear in CROA 3451, a case which involved an employee who stated that he "wished he had a gun and a bullet for everyone and one for himself":

Threatening the murder of fellow employees is an extremely serious matter. While at one time such comments might have been certain latitude, highly publicized real life tragedies which have occurred in a number of workplaces, both in Canada and elsewhere in recent years, have understandable changed that. The obligation to protect employee and supervisors against threats and fear for their own safety and the safety of their families is now recognized as one of the highest obligation of an employer.

...

When, as in the case at hand, an employer is faced with an employee who threatens to kill other employees, and utters those words on more than one occasion, causing obvious disturbances to persons in the workplace, it must take the threat seriously and deal with it without

delay. No employer has the luxury to wait out events to see whether the threatening words are coupled with an actual serious intent. Nor are employees or supervisors who suffer such threats to be left to worry and await the test of whether the employee demonstrates that he or she had serious intent. There is, very simply, no room for such threats in the workplace. It is no defence on the part of the individual who makes them to say, after the fact, that the threats uttered were not seriously intended.

It may well be that the grievor posed no real threat and had no real malevolent intention. However, for the reasons touched upon above, his statements clearly put the Company in a position where it had little alternative but to act. For reasons he best appreciates, Mr. Basra made a number of statements clearly invoking himself becoming involved with the use of a gun and violent consequences within the Company's operations. Clearly there is no room for any such utterances, at any time, in the workplace. Regrettably, I can see no basis to reduce the penalty assessed against Mr. Basra in these circumstances.

For these reasons the grievance must be dismissed.

September 13, 2013

MICHEL G. PICHER
ARBITRATOR