

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4269

Heard in Montreal, December 11, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

UNITED STEELWORKERS – LOCAL 1976

DISPUTE:

The assessment of forty-five demerits to the record of Mr. X.

JOINT STATEMENT OF ISSUE:

Mr. X. was investigated on December 19th, 2012 for comments made to the company Return to work Specialist on December 4th, 2012 and a voicemail message left for the Advisor of Employee Relations on December 5th, 2012. Following the investigation the Company assessed Mr. X. with forty-five demerits.

The union filed a grievance that the demerits were excessive and unwarranted based on mitigating factors.

The Company denied the grievance.

FOR THE UNION:
(SGD.) R. Marleau
Vice-President

FOR THE COMPANY:
(SGD.) D. Burke
Labour Relations

There appeared on behalf of the Company:

B. Sly	– Director Labour Relations, Calgary
D. Burke	– Manager Labour Relations, Calgary
J. Evans	– Return to Work Specialist, Toronto

There appeared on behalf of the Union:

R. Marleau	– Vice President District 6, North Bay
N. Lapointe	– Staff Representative, Montreal
X.	– Grievor, Toronto

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms, without substantial doubt, that the grievor engaged in unacceptable comments tantamount to threats, related in a telephone voicemail message communicated to Employee Relations Advisor Ms. Kari Giddings. The recorded statement includes the following:

“Anything happens to me from today, I told my wife to go after Donna to go after Donna...Gatiss. I mean it - if anything happens to me, because of this game must stop, must stop, must stop.

It appears that through the subsequent disciplinary investigation the grievor took little or no responsibility for his words.

The record also confirms that on the day prior to the statement to Ms. Giddings the grievor, Mr. X., raised his voice in a conversation with Return to Work Specialist Justine Myers, accusing her of being a racist.

The record confirms that in the past the grievor has also used intemperate language including the making of a threatening statements, on more than one occasion. In mitigation the Union argues that the grievor has been under psychiatric treatment, suffering from mood impairment, panic attacks, paranoia and anxiety through a condition it characterizes as Anxiety Spectrum Disorder.

As unfortunate as any condition which the grievor has may be, no physical or mental condition gives any employee a license to make abusive or threatening comments in an unacceptable tone of voice within the work place. In the instant case

the Arbitrator is particularly impressed with the efforts of the Company has made to accommodate the grievor's condition. That accommodation, however, does not extend to tolerating violent speech or threats of physical violence.

In all of these circumstances the Arbitrator can see no basis to reduce the forty-five demerits assessed. The grievance is therefore dismissed.

December 16, 2013

MICHEL G. PICHER
ARBITRATOR