

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4304**

Heard in Montreal, April 10, 2014

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY DIVISION**

DISPUTE:

Dismissal of Mr. David Smith.

JOINT STATEMENT OF ISSUE:

On November 23, 2013, the Company issued three Forms 104 to the grievor Mr. David Smith. The first assessed him with 10 demerits for his failure to report for duty on November 13, 2013, the second assessed him with 45 demerits for unbecoming conduct as evidenced by his submitting inappropriate text and voice mail messages to his supervisor on October 3, 2013, and the third advised him that he was being dismissed for an accumulation of demerits.

On November 13, 2013, the grievor failed to wake up because of a defective power bar and, as a result, missed the work bus. The Company failed to adequately investigate before assessing discipline. Mitigating factors existed that should have served to reduce the amount of discipline assessed. The grievor's actions on October 3, 2013 were not indicative or characteristic of his performance as a CP employee;

The Company violated Sections 15.1 and 15.7 of the collective agreement. The discipline assessed the grievor was excessive and unwarranted in the circumstances.

The Union requests the grievor be reinstated into Company service forthwith without loss of seniority and with full compensation for all wages lost as a result of this matter.

The Company denies the Union's contentions and declines the Union's request.

FOR THE UNION:
(SGD.) W. Brehl
President

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

There appeared on behalf of the Company:

B. Sly	– Director, Labour Relations, Calgary
B. Moores	– Track Renewal Supervisor, Toronto

There appeared on behalf of the Union:

W. Brehl	– President, Ottawa
D. Brown	– Counsel, Ottawa

AWARD OF THE ARBITRATOR

It is not disputed that the grievor sent text messages to Company supervisors, as well as voicemail messages that were abusive, disrespectful and highly inappropriate. Among the messages he left by voice mail to supervisor Bruce Moores the following is included "...my ah so called supervisor clown Bruce Moores... ah can't even fucking knock on the friggen door when I'm awake or wait an extra three minutes after fucking start time...you know you really piss me off I work my ass off for you yesterday and I gaver shit and did everything right and here you are anything just to screw me over...you know what fuck you...". Other phone messages left by the grievor are equally off colour and overtly disrespectful of the grievor's supervisor.

The grievor is not a long service employee, having worked some seven years on a seasonal basis for the Company. At the time of the incident here under examination he had twenty-five demerits on his disciplinary record. He had, however, been formally disciplined some six times during his seven years of service. In fact, discounting his off season periods, the grievor had some five and half years of active employment with the Company.

The record before the Arbitrator confirms that on September 26, 2013 Mr. Smith did not appear for work at the prescribed time. It appears that he was left behind at the hotel having missed the bus, as a result of which he missed his days' work. He was not disciplined for that incident, although it appears that his supervisor did speak with him about it.

In the week following, on October 3rd the grievor again failed to report for work in a timely manner having been left behind at the hotel. He once again missed a days' work. It appears that in relation to that incident the grievor left a number of voicemails on his supervisor's cell phone as well as sending him some text messages containing highly inappropriate profane and insulting language. It is not disputed that some three voicemails and three text messages communicated by the grievor to his supervisor all contain vulgar and insulting language. Suffice to say, for the record in the instant case, that the verbal abuse, visited upon his supervisor by the grievor, was extreme. It includes such phrases as "what's wrong with you people?", "fucking ignorant Bruce", "my ah supervisor clown Bruce Moores", "fuck you, you're a cunt...and you know what, I can't wait to tell you this to your face...fuck you!". The record also discloses that the grievor was disciplined for a physical altercation with a co-worker some thirteen months prior to these events.

On a review of the material before me I am satisfied that the grievor did fail to wake up and attend work in a timely fashion on November 13, 2013. I am satisfied that the assessment of ten demerits for that incident was entirely appropriate. Additionally, as noted in the Joint Statement of Issue, Mr. Smith received forty-five demerits for unbecoming conduct in relation to his text and voicemail messages to his supervisor. In my view those demerits were amply deserved. More significantly, the degree of disrespect and venom communicated to the grievor's supervisor seriously challenges the viability of any continuing employment relationship. In fairness, one would search the Awards of this Office for some time before finding a record of such obviously

disrespectful conduct and unacceptable communication on the part of an employee towards his supervisors.

For the reasons touched upon above, and on a close review of the facts, I am satisfied that it would not be appropriate to disturb the award of ten demerits for the grievor's failure to report for duty on November 13, or the forty-five demerits which were in my view properly assessed for his gross unbecoming conduct as reflected in voicemail messages to his supervisor on October 3, 2013. Additionally, as a seasonal employee with some seven years of service, and a less than envious prior disciplinary record, there are few mitigating factors which serve to assist the grievor in the instant case.

For all of the foregoing reasons the grievance must be dismissed.

April 14, 2014

MICHEL G. PICHER
ARBITRATOR