

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION**

**CASE NO. 4309**

Heard in Montreal, May 13, 2014

Concerning

**CANADIAN NATIONAL RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE  
LOCOMOTIVE ENGINEERS**

**DISPUTE:**

Alleged harassment and intimidation of Employee K by the Company in violation of the Article 96 of Agreement 1.2 and CN's Policy on Harassment-Free Environment.

**COMPANY'S EXPARTE STATEMENT OF ISSUE:**

The Union contends that on or about January 31, 2013 Employee K was allegedly harassed and intimidated by Company Officers. The Union filed a grievance on behalf of Employee K dated March 4, 2013.

The Union contends that the Company violated Article 96 of Agreement 1.2, CN's Policy on Harassment-Free Environment. The Union seeks in their Step 3 grievance an order that the Company issue a personal apology to Employee K.

The Company disagrees with the Union's contentions and has declined their request. The Company submits that a breach of Company policy – CN Human Rights Policy on Harassment-Free Environment and Article 96 – Workplace Environment of Agreement 1.2 did not occur.

**FOR THE UNION:**  
**(SGD.)**

**FOR THE COMPANY:**  
**(SGD.) D. Crossan for D. VanCauwenbergh**  
**Director Labour Relations**

There appeared on behalf of the Company:

D. Crossan	– Manager Labour Relations, Prince George
K. Morris	– Senior Manager Labour Relations, Edmonton
J. Girard	– Counsel,

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Caley Wray, Toronto
B. Ermet	– Service General Chairman, Edmonton
B. Willows	– General Chairman, Edmonton
M. King	– Local Chairman, Prince George

### **AWARD OF THE ARBITRATOR**

The record confirms that on or about January 31, 2013 the grievor was working as a locomotive engineer travelling eastbound on the Fraser subdivision in British Columbia. His train became involved in a collision with a truck at a level crossing. Fortunately there were no injuries to the occupants of the truck.

At or about 0215 hours Company Officer T arrived at the scene. He admittedly had never dealt with such an accident in the past, appeared tense, and yelled at the grievor with respect to the time which was available to deal with the problem. According to the grievor, while they were conversing in the cab of the locomotive, Mr. T made an inappropriate comment. Shortly thereafter, the grievor proceeded to ride to Prince George with Mr. T in the latter's truck.

Later the same day the grievor attended at the Company's yard to complete an accident report. The grievor maintains that upon arriving at the office of Company Officer H, Mr. H closed the door. The grievor relates that upon seeing that the grievor's hands were trembling Mr. H made the comment: "Do you have no cock?". The Union relates that locomotive engineer Employee K did not report the comments of Mr. T or Mr. H, out of fear of reprisal.

Mr. H and Mr. T both deny the grievor's allegations. In support of its case, the Union has filed a polygraph examination report taken in respect of Employee K, the conclusion of which is to affirm the truthfulness of his version of the events.

The Company objects to the filing of the polygraph evidence. It directs the Arbitrator to the decision of this Office in **CROA&DR 2385**. In that case polygraph evidence was rejected, with the Arbitrator commenting, in part, as follows:

For reasons related in a number of prior arbitration awards in Canada, I am satisfied that the results of a polygraph test taken by the grievor, which the Brotherhood sought to tender in evidence through a polygraph operator, is not admissible. Such tests are not free of error and their results risk great prejudice to the fact-finding process in an arbitration. The use of polygraphs, whether by unions or employers, obviously has further broad ramifications for labour relations generally. Absent more compelling authority than was advanced in this case, their results should not be entertained in this Office. (*Hyatt-Regency Vancouver* (1991), 23 LAC (4<sup>th</sup>) 119 *McPhillips*); *Brewers Warehousing Co. Ltd.* (1988) 1 LAC (4<sup>th</sup>) 110 (*Palmer*); *Kingsway Transport Ltd.* (1983) 10 LAC (3d) 440 (*Brandt*); *Canada Post Corporation* (1982) 9 LAC (3d) 60 (*Burkette*).

I think the Company's position is appropriate. For the reasons touched upon in **CROA 2385** I do not consider it that I should admit the polygraph evidence tendered by the Union in the instant case.

In approaching this case, the Arbitrator has some difficulty with the grievor's recall of events. It would appear that, at least in part, Employee K interpreted or deduced from the demeanour of Mr. T and Mr. H that they were hostile towards him. However the reliability of the grievor's account becomes questionable. For example, it would seem that at some point Employee K alleged that Mr. T referred to him as a "fucking faggot". Mr. T has denied that allegation and the grievor has withdrawn it. In

fact there is reason for concern as to the reliability of the grievors recollection of the events, following an incident which would naturally have left him in a relatively shaken state. Additionally, what the evidence confirms is that both Mr. T and Mr. H were legitimately concerned for the grievor's well-being, as for example by Mr. H offering to allow the grievor time off due to his involvement in the level crossing incident.

On the whole, I am not persuaded that the grievor presents a credible case for the allegations of harassment which are made within this grievance. For these reasons the grievance must be dismissed.

May 20, 2014

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MICHEL G. PICHER  
ARBITRATOR