

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4398

Heard in Calgary, May 14, 2015

Concerning

CANADIAN PACIFIC RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the dismissal of Locomotive Engineer S. Yawney of Thunder Bay, ON.

JOINT STATEMENT OF ISSUE:

On June 10, 2014 Engineer Yawney was informed by letter from the Company that he was dismissed from Company service for conduct unbecoming an employee as evidenced by his use of profanity and inappropriate comments directed towards a Company Officer during conversations with Trainmaster Troy Avis while working as Locomotive Engineer in Thunder Bay Ontario on May 21-22, 2014, a violation of CROR General Rule A (ix) and the Discrimination and Harassment Policy (Company Policy 1300).

The Union contends that Engineer Yawney was not afforded a fair and impartial investigation in this case and the Company is not free to assess discipline. Alternatively the Union contends that the ultimate penalty assessed is unwarranted, unjustified and excessive in the circumstances.

The Union requests that Engineer Yawney be reinstated to active service and that he be made whole for all wages and benefits lost in relation to his dismissal. 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.) G. Edwards
General Chairperson

FOR THE COMPANY:
(SGD.) L. Smeltzer
Labour Relations Officer

There appeared on behalf of the Company:

D. Pezzaniti	– Labour Relations Officer, Calgary
D. Guerin	– Director Labour Relations, Calgary

There appeared on behalf of the Union:

R. Church	– Counsel, Caley Wray, Toronto
G. Edwards	– General Chairman, Calgary
D. Roberts	– Local Chairman, Thunder Bay
S. Yawney	– Grievor, Thunder Bay

AWARD OF THE ARBITRATOR

The grievor, Engineer Yawney was working with Trainmaster Troy Avis on May 21, 2014. The grievor had been called out of the pool to attend at work and was not pleased. When Trainmaster Avis was explaining to the grievor why he was called out of the pool the grievor stated, “this is f—ing bullshit”. The grievor then found that that bells and the refrigerator in the locomotive did not work properly. Trainmaster Avis arranged to have a cooler brought to the grievor and to have the bells fixed. When the trainmaster came to deliver the cooler, the grievor again spoke profanely to him. There is some dispute as to what was said. The trainmaster said the grievor said: “you should pull your legs up over your head and stick your head up your ass”. He also said, “Give me the f---ing cooler and get the f---- out of my face”. At the investigation meeting the grievor said his words were: “Does everyone here have their f---g craniums wedged between their sphincters?’ and then, “just give me the f---g cooler and let me go do my job”.

In the investigation meeting the grievor said that he was not personally attacking Trainmaster Avis. The grievor admitted to having shown bad judgement in his use of profanities in the trainmaster’s presence, for which he said he was sorry. The grievor said he was frustrated and venting those frustrations, but was not directing profanities at the trainmaster.

The grievor was discharged by the Company for violation of CROR General Rule

A (ix) which reads as follows:

Every employee in any service connected with movements, handling of main track switches and protection of track work and track units shall;

...

(ix) conduct themselves in a courteous and orderly manner;

....

The Company also relies on the CP Discrimination and Harassment Policy. It refers to **CROA&DR 3880** where thirty demerits were issued to an employee who made a verbal assault upon a supervisor, but then promptly apologized. In **CROA&DR 1858**, the issuance of twenty demerits was upheld for an actual and direct threat made in the context of a verbal confrontation

The Company contends that the grievor's actions undermined the Company's authority, is tantamount to insubordination and that his failure to apologize directly to the trainmaster is an aggravating factor.

The Union contends that the incident amounted to shop talk and was not insubordination. It suggests that the words the grievor says he uttered to the trainmaster are different from those the Company states were said and are less offensive. It relies on the grievor's long service of thirty-five years and his record standing at twenty demerits at the time of the incident.

The grievor was clearly agitated and frustrated by issues that arose at the workplace, but his response was excessive and intemperate. It was not acceptable and

clearly worthy of discipline. The grievor apologized in the investigation meeting with a clear acknowledgment that what he did was not acceptable. He said he was not directing his comments at the trainmaster.

The Company's disciplinary response of discharge was excessive for an incident of this kind and inconsistent with the principles of progressive discipline and the grievor's service and record. Given the nature of the incident which was short-lived and borne out of frustration, and the grievor's very lengthy seniority, as well as his apology, twenty demerits is the appropriate discipline in this case.

Accordingly the grievance is allowed in part. The grievor is to be reinstated to employment with compensation and with no loss of seniority and service. Twenty demerits are to be substituted for his discharge.

June 8, 2015



MARILYN SILVERMAN
ARBITRATOR