

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4411-A

Heard in Montreal, June 11, 2015

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal on behalf Locomotive Engineer Ben Foreman of Winnipeg, Manitoba appealing the discipline of thirty demerit marks for his verbal harassment and intimidation of Conductor Adam McDermid, contrary to the CN Policy on Harassment-Free Environment on September 6, 2012.

COMPANY'S EXPARTE STATEMENT OF ISSUE:

On September 6, 2012, LE Foreman worked Train A-403041-06 along with Conductor Adam McDermid, and was determined to have been responsible for the above-noted infractions.

The Company conducted an investigation of the incident and determined that Mr. Foreman was deserving of the discipline of thirty demerit marks.

The Union contends that the discipline was unwarranted and should be expunged from his record, or reduced to a much lesser level.

The Company disagrees with the Union's contentions.

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

**FOR THE COMPANY:
(SGD.) J. Shields
Manager Labour Relations**

There appeared on behalf of the Company:

K. Morris	– Senior Manager Labour Relations, Edmonton
D. Brodie	– Manager Labour Relations, Edmonton
L. Fredericks	– Trainmaster, Toronto
D. Crossan	– Manager Labour Relations, Prince George

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
B. Willows	– General Chairperson, Edmonton
B. Ermet	– Senior Vice General Chairperson, Edmonton
B. Barr	– Local Representative, Vancouver
B. Foreman	– Grievor, Winnipeg

AWARD OF THE ARBITRATOR

1. The Grievor, a locomotive engineer, has over twenty-six years of service. He has one hundred-twenty career demerits. The incidents on September 6, 2012, for which the Grievor was given thirty demerits, the subject of this grievance, mostly occurred when the Grievor and Conductor Adam McDermid were together in the locomotive, with no-one else present. Mr. McDermid was a relatively new employee. At the time the Grievor was disciplined his active disciplinary record stood at ten demerits.

2. The evidence establishes that over the course of their journey together on September 6, 2012, the Grievor said the following to Mr. McDermid. During the initial portion of the trip the Grievor referred to Mr. McDermid as, "fucking stupid", and asked Mr. McDermid if he had selective hearing because Mr. McDermid did not hear something when he had his ear plugs in. After Mile 20, when Mr. McDermid asked the Grievor to go to channel 2 on the radio to facilitate a communication via radio, the Grievor refused, saying, "you didn't say, please, Ben, you know what, use your handset." Later during the same trip, the Grievor asked Mr. McDermid if he knew where the isoboard was. Mr. McDermid replied, he did not. The Grievor then said, "I have trainees that are smarter than you", and "everyone says that about you, how dumb you are? You know that? Randy and I were laughing so hard when you didn't know where track 1 was at Rivers. You're such a fucking goof." The Grievor said that he had on three occasions booked off, and would again book off, on sick leave when he was lined up to go on a tour of duty with Mr. McDermid, and that Mr. McDermid should return the favour, but was, "too much of a pussy to book off".

3. Mr. McDermid contacted Supervisor Veldhuisen at the end of his tour of duty and reported these things.

4. After this tour of duty both Mr. McDermid and the Grievor were in the Rivers bunkhouse. An exchange occurred between them, witnessed by two conductors. The Grievor approached Mr. McDermid and said the following:

The Grievor:	You talked to Arnold [Trainmaster Veldhuisen], you little shit, you don't know anything. I'm going to tell them that you were sleeping.
Mr. McDermid:	Okay, Ben.
The Grievor:	You fucking moron.

5. Mr. McDermid reported this exchange to another Transportation Supervisor, Trainmaster Harvey Harapiak. The Grievor admitted this exchange might have occurred. His explanation was that he had been frustrated by Mr. McDermid on the trip to Rivers.

6. Shortly thereafter, the Grievor blocked the doorway of the bunkhouse kitchen, preventing Mr. McDermid from leaving the room, when the Grievor whispered to him, "you fucking suck".

7. Conductor McDermid anticipated he would be harassed by the Grievor on the return trip so he made arrangements with a fellow conductor to trade places and he did not work with the Grievor on the way back.

8. The Union says that, at various stages, during the journey when the Grievor and Mr. McDermid were together, the Grievor sought to coach Mr. McDermid. He was also frustrated by the errors Mr. McDermid made during the trip. I accept this occurred, but his

coaching was interlaced with the abusive comments, bullying and insults described above.

9. The Company's Harassment Free Environment Policy describes harassment as follows:

Under this Policy, harassment refers to behaviour or communication, whether written or verbal, which a reasonable person would consider to cause offence or humiliation or affect the dignity of an employee, employment candidate, customer or member of the general public and, in the context of employment, results in an intimidating, hostile or offensive atmosphere ("poisoned environment").

10. The Company submits that the Grievor's actions towards his fellow crew member left Mr. McDermid feeling threatened, harassed, scared and bullied, all of which deserved an appropriate disciplinary consequence to ensure the proper corrective effect was achieved.

11. I agree with the Company's submission. What the Grievor said was not just a matter of using vulgar language. The insulting manner in which he did so is what matters. Having considered the investigation material and the answers and information provided, the Grievor crossed the line in his interactions with Mr. McDermid and engaged in behaviour contrary to the Company's Harassment Free Environment Policy. He deserved discipline for it. The conduct in the locomotive was aggravated by the Grievor's reprisal against Mr. McDermid when the Grievor learned that Mr. McDermid had complained of his behaviour. Instead of accepting that he had likely crossed the line of acceptable conduct and apologizing or backing down in some way, he exacerbated his misconduct

by trying to intimidate Mr. McDermid.

12. There was an apology to Mr. McDermid by the Grievor. At the conclusion of the investigation, the Grievor said the following:

I am sorry that Mr. McDermid felt threatened, harassed or intimidated. This was never my intention. In going forward I will offer an apology to Mr. McDermid and will treat him in the most professional manner with appropriate respect.

13. Further, the Union points to the fact that the Grievor went and shook Mr. McDermid's hand at the end of the investigation, which I accept is some measure of an effort to reconcile, and some credit should be given to him for this.

14. In the circumstances, given the apology to Mr. McDermid by the Grievor, showing some effort by him to move beyond the incident and some commitment to improve his behaviour, I find the appropriate sanction was twenty demerits. That penalty is substituted for the thirty demerits. The grievance is therefore partially upheld.

July 15, 2015



CHRISTOPHER ALBERTYN
ARBITRATOR