

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4435-A**

Heard in Toronto, January 12, 2016

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Discipline assessed to Locomotive Engineer Adam Myer in the form of a seven-day suspension for insubordinate behaviour directed towards a company officer while at work as a locomotive engineer at Whitecourt, Alberta on September 24, 2014.

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

On September 24, 2014, Locomotive Engineer Adam Myer was working road switcher assignment L50951-24 at Whitecourt, Alberta. During this assignment the Trainmaster on duty reported that the grievor had displayed insubordinate behaviour towards the Trainmaster.

The Company conducted an investigation and determined that the grievor did display insubordinate behaviour towards the Trainmaster, and that he had used foul and derogatory language. The Company determined that a seven-day suspension was the appropriate discipline response.

The Union contends that what transpired was an intentional provocation on the part of the Supervisor, and that there were no witnesses who support the claim that the grievor was being insubordinate, nor was the grievor heard using direct derogatory remarks. The Union requests that the discipline assessed be expunged and that the grievor be made whole for any loss of wages.

The Company disagrees with the Unions contentions.

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

**FOR THE COMPANY:**  
**(SGD.) P. Payne (for: D. Van Cauwenbergh)**  
**Director Labour Relations**

There appeared on behalf of the Company:

P. Payne	– Labour Relations Manager, Edmonton
S. P. Paquette	– Counsel, Montreal
K. Morris	– Senior Labour Relations Manager, Edmonton
B. Tessier	– Inspector, CN Police, Edmonton
R. Bateman	– Director Labour Relations, Toronto

There appeared on behalf of the Union:

M. Church	– Counsel, Caley Wray, Toronto
B. Ermet	– Senior Vice General Chairman, Edmonton
B. Willows	– General Chairman, Edmonton
R. Thompson	– Senior Vice General Chairman, Saskatoon
R. Donegan	– General Chairman, Saskatoon
A. Myer	– Grievor, Edmonton

### **AWARD OF THE ARBITRATOR**

The Grievor was hired on July 25, 2007, as a Conductor Trainee in Edmonton, Alberta, and qualified as a Locomotive Engineer on July 15, 2011. At the time of the dispute, the Grievor had accumulated seven (7) years of pensionable service.

On September 24, 2014, the Grievor was called as a Locomotive Engineer. The Conductor on this assignment was Mr. Dale Landry and the Brakeman was Mr. Kyle Burkholder. The evidence establishes that between 13:00 and 18:00 on that day, the Grievor and the Trainmaster argued at least three or four times and that the Grievor felt harassed and sought the advice of the Union.

Six co-workers witnessed one or more of those arguments and no one reported in their statements that they heard at any time foul language. All of the witnesses reported that Mr. Myer and Mr. Eliathamby did argue, sometimes in a “firm way... to the point of yelling”. The Grievor did admit that he became frustrated and even had a “momentary flair up”.

It was also reported by one of the Grievor’s co-workers that after the first argument held around 13:00, Trainmaster Eliathamby told him that “he was going to

straighten out that Engineer (“Mr. Myer”) so that he understood who the boss is”. It was also related by two co-workers that at around 18:00, when the crew returned to the bunkhouse for their meal and to tie up from their first tour of duty, that Trainmaster Eliathamby singled out the Grievor, telling him that he would have to eat on the unit, to which Mr. Myer objected.

Trainmaster Eliathamby indicates in his memorandum written on the day of the incident that the Grievor addressed him with foul language such as “You fucking want to change things around here, we have done this for ten to twenty years and no one has said anything, this is the way we do things. You don’t want us to call and talk to fucking customers, I’m just going to walk to the engine and sit and wait for the fucking paperwork delaying the assignment; I’m not fucking talking to you; are you fucking denying me my meal; I will fucking take however long it takes; you are a fucking asshole.”

The Grievor sustains that he did not use that language. He feels that he was targeted and treated unfairly by Trainmaster Eliathamby and cannot understand why he acted in such matter.

Upon a review of the material filed at the hearing, the Arbitrator concludes that the Company did not meet its burden of proof. Trainmaster Eliathamby’s allegations are not corroborated by any of the witnesses. None of the witnesses reported that they

heard Mr. Myer pronounced one or more of the derogatory remarks reported by the Trainmaster.

Furthermore, the evidence reveals that Mr. Myer was targeted and singled out in front of his peers by Mr. Eliathamby and such actions held by Trainmaster Eliathamby reveals his state of mind regarding the Grievor and therefore discredits his testimony.

For the foregoing reasons, the grievance must be allowed. The suspension of seven (7) days must be found null and void, and must be stricken from the Grievor's records. He shall be compensated for all wages and benefits lost.

I retain jurisdiction in the event of any dispute between the parties of the interpretation or implementation of this Award.

February 17, 2016

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MAUREEN FLYNN  
ARBITRATOR