

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4444**

Heard in Toronto, January 13, 2016

Concerning

**CANADIAN PACIFIC RAILWAY**

And

**UNITED STEELWORKERS – TC LOCAL 1976**

**DISPUTE:**

The dismissal of Mr. Darrell Palmer from Canadian Pacific.

**JOINT STATEMENT OF ISSUE:**

An incident occurred at the Calgary Crew Management Centre on July 22, 2015 regarding Mr. Darrel Palmer using an alternative desktop wallpaper on his Canadian Pacific desktop computer.

Mr. Palmer refused to change his desktop wallpaper when requested to do so by Manager James Taylor.

Mr. Palmer continued to refuse to change the wallpaper and Mr. Taylor ordered that Mr. Palmer be held out of service.

An Investigation was held on July 28, 2015.

Canadian Pacific issued forty-five demerit marks for display of inappropriate and unprofessional material and for insubordinate behaviour towards a company officer with his refusal to remove this inappropriate and unprofessional material when he was directed to do so.

Canadian Pacific terminated the employment of Mr. Palmer on August 20, 2015 for accumulation of demerits.

TC Local 1976 USW filed a step two grievance on September 18, 2015 stating that the images were not inappropriate or unprofessional and that the Company had no known existing policy regarding the display of alternative desktop wallpaper.

TC Local 1976 USW also stated that the insubordination had its root in a previous conflict between Mr. Palmer and Mr. Taylor and clearly a minor incident had been handed badly by both sides.

TC Local 1976 USW requested that the discipline be removed and that Mr. Palmer be returned to duty and compensated with all wages and benefits.

Canadian Pacific did not respond to the grievance.

**FOR THE UNION:**  
**(SGD.) R. Summerside**  
**Chairman Board of Trustees**

**FOR THE COMPANY:**  
**(SGD.) D. Cote for D. Guerin**  
**Director Labour Relations**

There appeared on behalf of the Company:

B. Scudds	– Assistant Director Labour Relations, Toronto
J. Bairaktaris	– Director Labour Relations, Calgary
J. Taylor	– Assistant Director Dispatching, Calgary
K. Able	– Assistant Trainmaster, Medicine Hat

There appeared on behalf of the Union:

R. Summerside	– Chairman, Board of Trustees, Calgary
N. Lapointe	– Vice President, District 5, Montreal

### **AWARD OF THE ARBITRATOR**

The Grievor, Crew Dispatcher Darrel Palmer is based in Calgary. At that time of the events given rise to his discharge he had three and a half years of service with the Company. He is alleged by the Company to have engaged in a repeated and sustained act of insubordination. He was issued forty-five demerit points for his refusal to follow instructions to remove desktop images from his Company computer.

On July 22, 2015 at about 1:40 pm, the Grievor was approached by his supervisor, James Taylor, and told to remove the desktop wallpaper on his computer screen. The screen contained slide show images which according to the Company were referred to by the Grievor as “Deviant Art”. A short while later, Mr. Taylor again approached the Grievor and asked him to remove the images, explaining that they were not appropriate and did not show a professional workplace appearance. The Grievor refused to do so and walked away from Mr. Taylor. Mr. Taylor attempted to explain to the Grievor why he had to remove the images, but the Grievor again refused to do so. At 5:20 pm Mr. Taylor met with the Grievor and other managers and the Grievor was

again told to remove the images from the Company computer. He said he did not understand why he had to do so and indicated he felt threatened and discriminated against. Again Mr. Taylor explained why he made his directive and this time the Grievor responded that Mr. Taylor was not a Company Officer but rather only an Assistant Director. Finally, at the end of the day when Mr. Taylor asked the Grievor to contact a manager regarding the situation, the Grievor replied that he did not have to listen as he was “off the clock now”.

The Union asserts that the desktop wallpaper was not offensive or inappropriate. Even if that is so, that submission does not assist the Grievor. He was still required, when asked by his supervisor, to remove it. From the material filed it appears that Mr. Taylor was calm, simply wanting his legitimate order to be followed. He was not escalating the situation and his behavior was appropriate. The Grievor should simply have followed the instruction when first asked. If the Grievor felt he had some justification for maintaining the images on his computer, he had available to him to follow the instruction from his supervisor and to grieve his entitlement to keep the images.

Although the Union does not defend the Grievor’s actions, it asserts, in addition to the fact that the images were not offensive, that the Grievor felt unjustly targeted.

Nevertheless, the Grievor’s behavior subsequent to what occurred on July 22, 2015 is relevant to the determination of this grievance. In support of the request for the

Grievor's reinstatement, the Union highlights that, during the investigation of the incident, the Grievor expressed regret, indicating he would "...like to personally apologize to Mr. Taylor regarding my rudeness and unprofessional actions".

Discipline was warranted in this case. The Grievor repeatedly refused to follow a direct and reasonable order. Even if he felt he had the right to continue to use his choice of images on the Company computer, which he did not, his correct option was to follow the instruction and grieve the matter. It was not open to him to repeatedly refuse to do as Mr. Taylor directed.

The Grievor is a short service employee, his actions were clearly insubordinate and unjustified. The Grievor refused to follow a reasonable instruction four times over a number of hours. At the time of these events the Grievor's disciplinary record stood at thirty demerit points although the Union advised that twenty of these are being grieved.

In mitigation of the Grievor's conduct, the content of the dispute was minor (the desktop wallpaper), reasonably unrelated to the performance of the Grievor's duties, and he has expressed regret for what he did. The Grievor acknowledged that he should have complied the first time he was asked to remove the images.

In both **CROA&DR 2479** and **2035** the assessment of thirty demerits points was held to be appropriate discipline for deliberate failure to follow instructions. In this case, were the Grievor to be issued thirty demerit points he would be discharged for

accumulation. In light of the mitigating factors referred to above, I am prepared to reinstate the Grievor to employment, without compensation and amend his record to reflect twenty demerits for the events of July 22, 2015. Accordingly, his record stands at fifty demerits (subject to the demerits that are being grieved).

January 18, 2016

A handwritten signature in cursive script that reads "Marilyn Silverman".

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MARILYN SILVERMAN  
ARBITRATOR