

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

CASE NO. 4804

Heard in Ottawa via Video Conferencing, January 12, 2022

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal on behalf of the Grievor, a Locomotive Engineer, of Jasper, AB, concerning the assessment of discharge for “violation of CN’s Policy on Harassment-Free Environment, CN’s Workplace Violence Prevention policy and CN Code of Conduct when speaking to a colleague on October 12 (Q18651-11) and October 13, 2020 (M31151-14).”

THE UNION’S EXPARTE STATEMENT OF ISSUE:

On October 12, 2020, the Grievor was assigned to train Q18651-11, operating between Jasper and Edson on the Edson subdivision. On October 13, 2020 the Grievor worked train M31151-14 back home to Jasper. The Grievor worked with the same Conductor on both tours of duty. The Conductor subsequently alleged that the Grievor had made inappropriate comments to her throughout these tours of duty. The Conductor declined to notify the Grievor that any comments were unwelcome.

Immediately upon the Grievor being notified by a mutual colleague that the Conductor had experienced discomfort with the nature of their conversations, the Grievor reached out to apologize for the misunderstanding. A few days later, the Grievor was served a Notice to Appear for a formal employee investigation on October 26, 2020. Subsequent to the investigation, the Company determined the Grievor was in violation of CN’s Harassment-Free Workplace Policy, Workplace Violence Prevention Policy, and Code of Business Conduct.

On October 28, 2020, the Grievor notified the Company that he had been admitted into a mental health facility and was requesting an accommodation in respect of a mental health condition. The Company assured the Grievor that no action would be taken until he was discharged from the hospital. However, the Grievor was terminated effective the same day, October 28, 2020.

The Union contends that the Company has breached the mandatory requirements of Article 86 of the Collective Agreement and the discipline must be held void ab initio. The Union further contends that there is no justification for outright dismissal in all of these circumstances. If the Company is able to establish some cause for discipline in these circumstances which is denied, the ultimate penalty of discharge is unreasonable and overzealous.

For all of these reasons the Union requests that the grievor be reinstated into his employment without loss of seniority and be made whole for all lost wages and benefits.

THE COMPANY'S EXPARTE STATEMENT OF ISSUE:

On October 12, 2020 the grievor was assigned to train Q18651-11, operating between Jasper and Edson on the Edson subdivision. On October 13, 2020 the grievor worked train M31151-14 back home to Jasper. The grievor worked with a female colleague on both tours of duty. The Conductor subsequently alleged that the grievor had made inappropriate comments to her throughout these tours of duty, in contravention of various CN Policies. Accordingly, the Company set out an investigation in accordance with the Collective Agreement to review such allegations.

The investigation was carried out on October 26, 2020 whereby it was determined he was found in violation of CN's harassment-free policy, workplace violence prevention policy, and code of business conduct. The grievor was terminated from employment effective October 28, 2020.

The Union submits that the Company violated Article 86 of the Collective Agreement and the discipline must be expunged. Alternatively, the Union's position is that the ultimate penalty of discharge is unreasonable and overzealous, and requests that the grievor be reinstated into his employment and be made whole for all lost wages and benefits.

The Company disagrees with the Union's contentions and denied the request, as the grievor was culpable for his actions and disciplined accordingly. The Company disagrees that the grievor's right to a fair and impartial investigation in accordance with Article 86 was violated.

FOR THE UNION:
(SGD.) K.C. James

General Chairman

FOR THE COMPANY:
(SGD.) D. Klein

SVP and CHRO

There appeared on behalf of the Company:

K. Macdonell	– Manager Labour Relations, Edmonton
M. Boyer	– Senior Manager Labour Relations, Montreal

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
KC James	– General Chairman, Edmonton
T Russett	– Senior Vice General Chairman, Edmonton
J Doyle	– Local Chairperson, Jasper
The Grievor	– Jasper

AWARD OF THE ARBITRATOR

1. On review of the material and submissions made by the parties at the hearing before me on January 12, 2022, I make the following findings and declarations.

2. The Grievor's conduct warranted discipline, but not discipline that would have amounted to dismissal.

3. While reinstatement would ordinarily follow in cases where grounds for dismissal are not established, the arbitrator may assess the conduct of the employee and either substitute a penalty or, alternatively, arrive at a conclusion as to whether or not the continuation of the employee/employer relationship is tenable or has been permanently destroyed (Section 60(2) of the *Canada Labour Code*).

4. In all of the circumstances, I find that the employee/employer relationship here at issue is no longer tenable.

5. The grievance is allowed in part. The Grievor shall be awarded monetary compensation in lieu of re-instatement.

6. Accordingly, in full settlement of the matter, I remit the discussion as to the monetary compensation to the parties.

7. I shall retain jurisdiction with respect to the implementation, interpretation and application of this award should the parties be unable to resolve the issues of damages.

February 8, 2022



MICHELLE FLAHERTY

ARBITRATOR