

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

CASE NO. 5029

Heard in Calgary, April 10, 2024

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal on behalf of Locomotive Engineer D, Medvid, concerning the assessment of discharge for the alleged *“Harassment of fellow employees, conduct unbecoming and allegedly causing or contributing to a hostile work environment”*

JOINT STATEMENT OF ISSUE:

On September 13 & 15, 2021 the Company alleged that the grievor was involved in violating CN Policies on Workplace Violence Prevention and Harassment-Free Environment. On September 24, 2021, the grievor was served a Notice to Appear for a formal investigation on September 28, 2021, regarding the accusations. Following the investigation, the grievor was discharged from service for the harassment of fellow employees, conduct unbecoming and allegedly causing or contributing to a hostile work environment.

The Union believes that the Company failed to meet the burden of proof to support the accusation of harassment and that Mr. Medvid was solely responsible for causing and contributing to a hostile work environment.

The Union argues that the Company failed to provide a fair and impartial investigation in violation of Article 86 by asking leading questions of its witness and that the discipline assessed was discriminatory, unnecessary, excessive and unwarranted. Furthermore, the Union disputes the allegations made by Mr. Rieger and finds that Mr. Medvid didn't interact with Mr. Rieger, and states that there is nothing in the memo or any of the evidence to suggest that Mr. Medvid is guilty of the accusations. The incidents described by Mr. Rieger were between himself and Tom Duthie and Mr. Medvid's conversations were solely with Nick Brown; an employee who never filed a complaint.

The Union insists that the discipline assessed must be expunged from Mr. Medvid's permanent work record and that he should be returned to the working board without loss of seniority, and be made whole for all lost wages and benefits. In addition, the Union is seeking remedial compensation in the form of punitive damages for all undue hardship suffered by Mr. Medvid as a result of the Company's actions.

The Company disagrees with the Union's contentions.

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

FOR THE COMPANY:
(SGD.) S. Fusco
(for) N.J., VP Western Region

There appeared on behalf of the Company:

- S. Fusco – Senior Manager, Labour Relations, Edmonton
- R. Singh – Manager, Labour Relations, Vancouver

And on behalf of the Union:

- R. Church – Counsel, Caley Wray, Toronto
- K.C. James – General Chairperson, Edmonton
- T. Russett – Senior Vice General Chairperson, Edmonton
- M. Meijer – Junior Vice General Chairperson, Edmonton
- J. McDonald – Local Chairperson, Div.864, McLennan
- B. Heckley – Local Chairperson, Div.105, Prince George
- N. Irven – General Secretary-Treasurer, Edmonton
- D. Medvid – Grievor, High-Level, AB

AWARD OF THE ARBITRATOR

- [1] The Grievor is a Locomotive Engineer. At the time of this incident, he had been employed for twenty (20) years, having begun his employment in November of 2000, with a predecessor to the Company.
- [2] This Grievance involves interactions which took place on September 13 and 15, 2021. The Incidents were investigated on September 28, 2021. This is the third Grievance heard relating to this Grievor in the April CROA session, which resulted from his actions in September of 2021.
- [3] In **CROA 5027**, the assessment of 25 demerits was upheld as reasonable for threatening and harassing behaviour of a Public Health Official of the NWT on September 21, 2023 (the “Border Incident”). On September 23, 2021, the Grievor was involved with another altercation with the owner of Hello Cabs, a third party contract of the Company, for which

he was assessed 35 demerits (the “Cab Incident”). That Grievance was heard as **CROA 5028** and that discipline was also upheld.

- [4] The Investigation into the Border Incident occurred on September 27, 2021 and the Investigation into the Cab Incident – which was supposed to take place the same day – was postponed to September 28, 2021, due to the length of the Border Incident Investigation. On September 28, 2021, there was also an Investigation into what I will refer to as the “Colleague Incidents” – at issue in this Grievance – which occurred prior in time to the other two incidents, but which were investigated after those third party incidents.
- [5] As the discipline discussed in **CROA 5027** and **CROA 5028** was upheld, the Grievor is at 60 demerits. Under the Brown System of Discipline, that results in automatic termination, so the assessment of this third incident is moot. However, in case I am found wrong regarding the assessment of either of the previous discipline, I will also assess this Grievance.
- [6] Unlike the earlier two incidents, these Colleague Incidents were allegedly directed at fellow employees and not third parties.
- [7] The issues between the parties are:
- a. Was the Grievor culpable for actions which occurred on September 13 and 15, 2021? and
 - b. If so, was discharge an excessive and unwarranted penalty?
- [8] For the reasons which follow, the Grievance is dismissed and the discharge is upheld.

[9] This is another incidence of the Grievor inappropriately addressing colleagues in a bullying, confrontational and inappropriate manner. It was a third in a pattern of inappropriate behaviour, where the Grievor was convinced his opinion was the correct one. His actions were culpable and discipline was appropriate. As the Grievor was already at 60 demerits for inappropriate behaviour against third parties, his discharge after this incident was not excessive or unwarranted and was just and reasonable.

Analysis and Decision

[10] The Company relied on the Statement of Mr. Rieger, who was a colleague of the Grievor.

The Company filed both a written statement of Mr. Rieger, and he gave evidence in the Grievor's Investigation. Mr. Rieger's statement describes two instances where the Grievor created a hostile work environment, that he could "clearly recall".

[11] He described that Mr. Medvid came into the bunkhouse and began speaking to Mr. Brown and himself. He described his manner as hostile and saying:

...that we were not training the new unqualified employees in the proper manner. Instead of them shadowing us while we worked and letting them follow along with the plan and make certain moves and complete various actions, we were to shadow them and let them do every single action for the day, and to possibly delay the assignments. Nick protested this form of learning, saying that the trains had to get built, and while he lets the trainees do as much as he can sparing for time, the trains must get built by the order time or as close to it as to avoid a delay of assignment. Don responded with a statement paraphrased best by saying "Screw Dan, screw the company, if the trains don't get built, so what? The trainee won't learn unless they do all the work themselves, and they (the company) will see how bad it is up here." He put the blame on me too, a little bit, as I had trained an employee once or twice in the yard since qualifying by that point. After this, the situation was tense, to say the least, and he was mostly quiet as we finished our shift, tied up, and went home as quickly as we could.

[12] Mr. Rieger has since left the Company's employment. His evidence at the Investigation was that he did so "due to the toxic work environment and hostile work environment" and that he did not tell the Grievor the truth about his reasons for leaving (in text messages filed by the Union), because he was "fearful of revealing my true intentions" because of "retaliation and intimidation" from the Grievor. He stated that

The work environment is toxic because of the pressure put on the yard crew by Mr. Medvid to train the trainees in a manner according to him, not in the manner of what the Company requires me to do in my work for the day (Q/A 31, emphasis added).

[13] The Grievor gave the following explanation at his Investigation:

...I was not speaking in a hostile manner, I was explaining facts, stories, situations, rules and with my passion for teaching and training people and wearing a mask could be deemed as mildly excessive in a small room (Q/A 17).

[14] The Grievor explained he had concerns with how Ms. Sharp's training was proceeding under Mr. Brown. He admitted he had not been asked for feedback on Mr. Brown's job performance.

[15] Mr. Rieger indicated he felt threatened and intimidated, not only from watching the Grievor's conduct with Mr. Brown, but because it was also directed at him:

During the night of Monday September 13, while he was in the midst of giving Nick heck, for lack of better term, of training the trainees properly. He turned to me and said "this applies to you too because you have had trainees". I felt threatened by that statement because not only the rant he went on applied to Nick, all of it also applied to me as well. So the next night on the Wednesday the 15th, every word that was spoken to Nick, was applying to me as well, this is what caused me to feel intimidated because I was also going to be the foreman of the yard (Q/A 32, emphasis added).

[16] Mr. Rieger stated he had not come forward with the information as h was “fearful of the retaliation and/or intimidation by Mr. Medvid” (Q/A 34).

[17] The second incident relayed by Mr. Rieger was where he and a co-worker were eating their hot meal two days later, on September 15, 2021. He described that the Grievor came in and “gave the exact same rant as Monday”. He noted that two other employees came into the bunkhouse and overheard this rant. He stated:

Don decided to start taking a strip off of Walter Lindberg for actions that preceded CN’s takeover of Rail America on the MKNR. Walter responded calmly and without malice, and Don kept on as previously described. It was at this point I left the building, because I couldn’t wait another minute inside to witness it. ..

[18] Mr. Rieger was also trained by Mr. Brown and felt he had done a good job training him and stated “I personally found no fault in his training. He got the trains built, he kept me safe, and he kept himself safe as well. I learned how to do the job efficiently and safely under his tutelage”.

[19] It is not disputed that it was not the Grievor’s responsibility to train new employees, and in particular Ms. Sharp. It is also not disputed that Mr. Brown did not seek the Grievor’s feedback and he was not asked to express his ‘passion for teaching and training people’ and judge Mr. Brown’s methods. While the Grievor stated in his Investigation he was concerned with how Ms. Sharp was being trained – and that he had “passion for teaching and training people”, her training was not his concern, as he had not been assigned to train Ms. Sharp by the Company. Neither did he did take any steps with the Company to express any safety concerns regarding Mr. Brown’s training.

[20] The Union defended the Grievor's conversation on the basis that he was "passionate" about training, and had "strong beliefs" in how training should occur, given his considerable experience. While that may be the case, he was not required to express those ideas. The Grievor had not been chosen by the Company to offer training to these new employees. It was not up to him to direct or even influence how those employees were trained. He had no basis to insert himself into that issue.

[21] I am satisfied the Grievor had strong opinions on how training should be completed by these individuals; and that for some unknown reason, on September 13 and 15, 2021 he made a very poor choice to express those strongly held opinions to those trainers. Neither did the Grievor speak to Mr. Brown one-on-one but I accept he chose to "rant" – as described by Mr. Regier – when other employees were present.

[22] His opinions were not only expressed, but in doing so, he belittled his colleagues' training efforts, which was humiliating to them. If the Grievor had such strongly held opinions—and the Grievor felt the training methods used were not correct – then his proper recourse was to approach the Company management and have a discussion. He chose not to do so. The reasons he gave for not involving the Company – that "nothing was ever done" – lack credibility and offered no excuse for his conduct.

[23] I accept he was insulting and belittling of training methods that did not agree with his philosophy; inserted himself inappropriately to express those opinions and to belittle the training that was being done by Mr. Brown, in front of Mr. Rieger; and that Mr. Rieger who was hearing him make these comments appropriately felt threatened and intimidated, which ultimately led to him resigning this employment with the Company. By his bullying,

humiliation and intimidation tactics, the Grievor created any environment that was toxic and hostile to his co-workers. He was guilty of conduct unbecoming.

[24] Culpability for some measure of discipline is warranted.

[25] The next question is whether discharge was reasonable.

[26] The Grievor is a long-service employee. As noted in **CROA 5028**, the Grievor's discipline record was not clean. He had violated the Company's Harassment-Free Environment Policy, even before September of 2021, in 2019.

[27] Like in the past two most recent situations, the Grievor did not have any insight into his own behaviour, and tried to deflect responsibility in the Investigation. He had no understanding that his "passion" and "strong opinions" were offensive to his colleagues and appeared to be blind to the impact his behaviour had in the workplace.

[28] As this was the third time the Grievor had acted inappropriately towards others *in the month of September 2021 alone*, the Grievor was already in a dismissible position as a result of **CROA 5027** and **5028**. The Company did not discharge him when he had reached 60 demerits, presumably because that was unnecessary as they already intended to do so as a result of this interaction, which was investigated on the same day as the incidents at issue in **CROA 5028**.

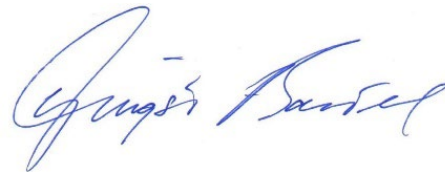
[29] Sitting at 60 demerits, the Grievor was highly vulnerable and could have *already* been dismissed, even without these events. *Any* further incident could give that cause. That incident occurred in this case. So long as his behaviour could attract even one demerit, he was liable to be dismissed.

[30] I have no difficulty in finding his behaviour was sufficient to support 45 demerits, given that this was the *third* time the Grievor chose to act in a manner which was confrontational and humiliating. In this case, he also berated his fellow employees in front of other employees.

[31] As that level of demerits results in dismissal, the Company's decision to dismiss the Grievor for his actions on September 13, and 15, 2021 was not excessive. That discipline was a just and reasonable response to inappropriate and offensive comments made in the workplace to his colleagues.

[32] The Grievance is dismissed.

I retain jurisdiction for any questions relating to the implementation of this Award; to correct any errors; and to address any omissions to give it the intended effect.



June 27, 2024

CHERYL YINGST BARTEL
ARBITRATOR