

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

CASE NO. 5099

Heard in Edmonton, November 12, 2024

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal on behalf of Conductor Scott Urbanovitch, concerning the assessment of discharge for *"Conduct unbecoming when speaking about a fellow employee to the Crew Caller on November 29, 2020, and conduct/inappropriate comments made to the crew dispatcher on December 02, 2020."*

JOINT STATEMENT OF ISSUE:

On November 29, 2020, Conductor Scott Urbanovitch (the Grievor) was found to have engaged in Conduct Unbecoming when he spoke about a fellow employee to a Crew Dispatcher, and then found to have made inappropriate comments to the Crew Dispatcher on December 2, 2020.

The Grievor was required to attend a Formal Investigation for these allegations of Conduct Unbecoming, held on January 28, 2021, and on February 3, 2021, the Grievor was issued with 20 demerits for *"Conduct unbecoming when speaking about a fellow employee to the Crew Caller on November 29, 2020, and conduct/inappropriate comments made to the crew dispatcher on December 02, 2020"*.

It is the Union's position that the employee's behaviour was made in the "heat of the moment" and that he immediately apologized, therefore the discipline assessed was arbitrary and unwarranted and, in any case, excessive and should be expunged or, in any case, reduced and the Grievor's record made whole.

The Company disagrees with the Union's position and has denied grievance. It argues that the Grievor admitted to making comments that were incompatible with the Code of Business Conduct, and that his comments could be interpreted as being threatening, thus there is no basis for a reduction in discipline in this matter.

For the Union:
(SGD.) R. S. Donegan
General Chairmen CTY-W

For the Company:
(SGD.) N. James
VP, Western Region

There appeared on behalf of the Company:

R. Singh	– Senior Manager, Labour Relations, Vancouver
C. Baron	– Manager, Labour Relations, Edmonton

And on behalf of the Union:

M. Church	– Counsel, Caley Wray, Toronto
R. Donegan	– General Chairperson, CTY–W, Saskatoon
J. Thorbjornsen	– Vice General Chair, Saskatoon
A. Christine	– Local Chair, Edmonton
S. Urbanovitch	– Grievor, Edmonton

AWARD OF THE ARBITRATOR

Issue & Summary

[1] This is one of two Grievances heard regarding this Grievor at the November 2024 CROA session, for two separate issues. In **CROA 5100**, the Grievor’s discharge for violation of the Company’s Drug & Alcohol policy was set aside, due to the success of the Union’s preliminary objection that the Investigation of that conduct was not impartial or fairly conducted, and the discipline was therefore *void ab initio*.

[2] This Grievance was filed against the assessment of 20 demerits for “conduct unbecoming” on November 29, 2020 and December 2, 2020. At the time of these incidents, the Grievor had been employed for over twelve years and was working as a Conductor, out of Edmonton. The Investigation of the Grievor’s comments took place in January of 2021.

[3] I am satisfied that on November 29, 2020, the Grievor slandered his co–worker, to the crew office, stating he was a “lazy piece of s[**]t”; was “fat and lazy” and “a lazy piece of crap” and “he is pretty useless”. He also stated that “...I knew as soon as [his colleague] showed up, he was gonna have a little hissy fit”. In his Investigation, the Grievor stated he had “no issue with [his colleague] whatsoever and that his comments on December 2, 2020 resulted from his “frustration” at being “scooped on a train” (Q/A 10). He also stated he was going through a “rough time” and “said things I should have said, and do apologize for it” (Q/A 8).

[4] On December 2, 2020, there was another call between the Grievor and the crew office:

Grievor: Hello?

Crew Caller: Hi.

Grievor: Hey there. Hey, ah...Just curious, we're looking at the line up here, are they really this rescue 356 out of Wainwright?

Crew Caller: Ahhh Yes.

Grievor: That hasn't even left Edmonton yet. And there's crews available in Edmonton, like we got scooped three times coming here yesterday. Did they call that 804 before a speed? Like I'm gonna say no right now. Like, we're lining up for a 15,000 foot 199 to go home. And the chief wants to do this. So I tried calling. He's not answering. I don't know who is, but...

Crew Caller: I can try getting a hold of him, but that all I can really do because I, I don't put them on the lineup.

Grievor: No, I know this is just crap. Like, they screwed us yesterday. They're not screwing us today.

Crew Caller: I can try getting of him.

Grievor: Ok.

Crew Caller: Ok.

Grievor: Yeah, I'm, I'm [gonna] hold, or ...

Crew Caller: It's up to you. I don't know if he's gonna get ... if he's gonna answer, but I can try.

Grievor: Yeah, I'll hold on, OK.

Crew Caller: Ok.

*** No Audio 00:01:12 – 00:03:21***

Crew Caller: Hello?

Grievor: Hello.

Crew Caller: Hey. So I just spoke to the chief and he told me, um, it is correct and that we are calling it for that time.

Grievor: Unbelievable [inaudible] you can book me sick, get me a taxi home.

Crew Caller: You're booking sick?

Grievor: Well, this is just, like what a kick in the nuts. [sigh] 20 minutes before our 14 hour layover here. [sigh]

Crew Caller: Sorry, I don't really know what to tell you.

Grievor: Like, unbelievable...[sigh]... okay, whatever. God dammit.

Crew Caller: Ok.

Grievor: ...**hope the train crashes** [inaudible] sorry, it's not your fault [emphasis added]

Crew Caller: No worries.

[5] The Grievor explained “the comment I made was said out of frustration and anger that I would miss seeing my kids again” (Q/A 11). He also stated it was an “extremely stupid thing to say and I knew it when I said it”, (Q/A 11). He also denied he had any anger issues.

[6] The Company argued the Grievor breached its Code of Business Conduct and its Policy to Prevent Workplace Harassment and Violence Prevention; which were policies on which he was trained and which he understood. It pointed out it was the crew caller and not the Grievor who apologized. It argued the Grievor had a similar incident of conduct unbecoming when he made threatening remarks and used profanity regarding one Company Officer to another. It also pointed out the Grievor had consistent violations over the course of his career. It argued the Grievor’s explanations did not act to mitigate his conduct and that its discipline was consistent with CROA jurisprudence, including **CROA 3593, 3451, 3511** and this Arbitrator’s assessment in **CROA 5029**.

[7] The Union argued the Grievor’s comments were said in the “heat of the moment” and that he apologized and that there were mitigating circumstances for the December 2, 2020 comment, including the fact the Grievor had been waiting almost 14 hours to be called for a train heading back to his home terminal and was looking forward to spending time with his children, and that he had to give 24 hours notice in advance to do so and that shortly before his expected call time, a “rescue turn” appeared on the train line—up, for which he was to be called, which would require returning the train to Wainwright. It argued the Grievor was understandably frustrated and angry at the change in schedule and the loss of the opportunity to visit his children and that he apologized to the crew caller repeatedly. It argued the Company refused to “mitigate the discipline” even though the Grievor had admitted his responsibility and was remorseful, given an explanation and apologized, realizing in hindsight his comments were inappropriate. The Union relied on **CROA 3030** and **CROA 3168**, decided in 1999 and 2000 respectively.

[8] For the reasons which follow, the Grievance is dismissed. The assessment of 20 demerits was a just and reasonable response to the Grievor's actions on these two occasions.

Decision

[9] The Union's arguments that the Grievor's comments were "heat of the moment" for which he apologized is not compelling. This Grievance involves not just one, but two incidents where the Grievor allowed his frustration to overflow and where his anger and temper were allowed to get the better of him. Those incidents were in fact separated by three days. Given that there are *two* incidents of inappropriate comments – and the first incident involved *multiple* inappropriate comments – this is not a "heat of the moment" situation, nor was the Grievor provoked. If it were a "heat of the moment" issue, the Grievor would have changed his behaviour between November 29 and December 2 – which was only three days later. This fact situation of two inappropriate incidents in close succession supports a conclusion that the Grievor lacks insight into – and responsibility for – the appropriate manner of speaking to, and about, his colleagues in the workplace.

[10] The Union's own jurisprudence supports that Arbitrator's take a dim view of employees who exhibit outbursts of frustration and anger in the workplace, whether or not the individual who is slandered is present.

[11] The two decisions on which the Union relied were decided in 1999 and 2000, which was more than two decades ago. In **CROA 3030**, the Grievor had a confrontation with the owner of an improperly parked vehicle. 40 demerits were issued for a "single" rude verbal exchange, which was reduced to 15 demerits by the Arbitrator, who also noted that while the Grievor had a prior record (not detailed), there had also been "evidence of real improvement of this aspect of his performance" such that 15 demerits was an appropriate level of discipline. **CROA 3168**, involved one situation where the grievor used "four letter language" about a fellow employee to another employee. It was noted that the statements were not expressed in the presence of the individual. In that case, there were not multiple incidents at issue, nor was it clear that more than one "four-letter" word was used. There was also evidence of "bad blood" where conduct of both individuals was suspect.

[12] In this case, there is no evidence of any bad conduct by the Grievor's colleague. Unlike in **CROA 3030**, in this case, not only is there no "improvement" from a previous checkered record, the Grievor had *two* incidents of inappropriate conversations with his crew colleague, in a short space of time. The Grievor also referred to "booking sick" due to his frustration. While he did not do, commenting about booking sick because of frustration is obviously not an appropriate use of sick time.

[13] I take the Company's point that – while the Grievor apologized for his *second* comments, he did not apologize to the crew caller for his first comments regarding his colleague, or even demonstrate any insight that his comments were not appropriate, at that point in time. Throughout the conversation, there were *multiple* inappropriate comments made regarding that colleague without any apparent insight by the Grievor into their rudeness or inappropriateness, which demonstrates a considerable lack of insight. This was also not a "heat of moment" exchange with another employee involved in the issue. In this case, the exchange took place over several minutes and was with the crew office.

[14] **CROA 5029** involves multiple situations but more extensive comments, which supported 45 demerits. **CROA 3451** involves a more serious incident, where the grievor stated he wished he "had a gun and enough bullets to shoot everyone at work and a bullet for himself". His dismissal was – not surprisingly – upheld. That is more serious misconduct than occurred in this case.

[15] The Grievor's comment regarding the crashing of the expected train takes on significance given the specific industry in which the Grievor was employed and the seriousness of such situations, but is not a threat to carry out particular conduct, as was the case in **CROA 3451**.

[16] Two decisions are particularly helpful. Both reflect the concerns which Arbitrators have with disrespectful behaviour in the workplace.

[17] In **CROA 3593**, the Grievor declined to obey a direction from his supervisor, including refusing to sit down and saying "screw you" and leaving. In that case, the arbitrator found an element of "provocation" which did not exist in this case. The arbitrator in that case noted that the grievor was – even so – not "given a licence to be disrespectful

and dismissive of his supervisor”. Discharge of that 19-year employee was set aside and he was reinstated, but without compensation, which is a significant form of discipline.

[18] **CROA 3436** is also a useful comparator. In that case, an individual of twenty years’ service without any prior record of “behaviour shortcomings” was assessed a two week suspension instead of discharge for expressing “in very strong terms” his displeasure at his privacy being violated, even though no pattern of behaviour had been established as argued *and* he had a valid concern.

[19] Both of these decisions support a significant disciplinary response for outbursts of frustration and anger in the workplace.

[20] While the Union argued the Grievor had “almost 18 years” of service, that is not correct. At the time of these events – which is the appropriate time period for consideration – he had less than fourteen years’ service. He did not have a clean disciplinary record, and had one “conduct unbecoming” discipline issue, but that is dated, at seven years’ previous, in 2013. His record shows both missed call issues (as argued by the Union) but also operating issues. However, the Grievor showed a lack of insight into his comments on November 29, 2020, releasing his frustration and anger at his colleague in *multiple* inappropriate statements. This was not a case of only one or even two slanderous comments made in the heat of the moment. The Grievor again let his frustration reign over his good judgment a mere three days later.

[21] The Grievor’s frustration over not seeing his children was not a strong mitigating factor. The nature of railway work means it is not an uncommon situation that plans must change and individuals are held at away from home terminals longer than would be desired and therefore miss time with their families. That many of those individuals could be divorced - with more limited time with their children - is evident from the high divorce rates generally in this country. Further, many employees go through “rough patches” but that is not a “licence to be disrespectful” of their colleagues, or to express a wish of harm on any colleague to another.

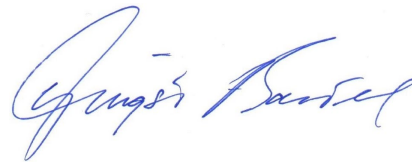
[22] In all of the circumstances, and considering the jurisprudence, an assessment of 20 demerits for two inappropriate exchanges – one with multiple inappropriate comments

and both made within the span of three days – was not excessive, but was rather a measured, just and reasonable disciplinary response.

[23] The Grievance is dismissed. The discipline of 20 demerits is upheld.

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

February 10, 2025

A handwritten signature in blue ink, reading "Cheryl Yingst Bartel". The signature is fluid and cursive, with a horizontal line drawn underneath it.

**CHERYL YINGST BARTEL
ARBITRATOR**