CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2154

Heard at Montreal, Tuesday, 11 June 1991

concerning

ONTARIO NORTHLAND RAILWAY

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The assessment of discipline to Ms. M. Carriere, Clerk Typist.

JOINT STATEMENT OF ISSUE:

Clerk Typist M. Carriere was suspended without pay for 30 working days and assessed 30 demerit marks for insubordination due to her allegedly writing and sending an insolent letter to P. Turgeon, Area Supervisor, Cochrane on April 10, 1990.

The Union appealed the discipline on the grounds that the matter is not work related and requested removal of the discipline and reimbursement to Ms. Carriere of lost earnings for the 30 working days suspension.

The Company denied the appeal.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) E. FOLEY	(SGD.) P. A. DYMENT
GENERAL CHAIRMAN	PRESIDENT

There appeared on behalf of the Company:

M. J. Restoule	-- Manager, Labour Relations, North Bay
R. G. Leach	-- Chief Mechanical Officer, North Bay
B. Lindblom	-- Witness

And on behalf of the Union:

H. Caley	-- Counsel, Toronto
D. Gillespie	-- Vice-General Chairman, North Bay
D. Graham	-- Local Chairman, North Bay
B. Burns	-- Observer
M. Carriere	-- Grievor

AWARD OF THE ARBITRATOR

The evidence discloses that Ms. Carriere sent an anonymous letter to the attention of Supervisor J.P. Turgeon and his wife on or about

April 10, 1990. It cannot be disputed that the tone of the letter was insolent and abusive and that it was calculated to bring insult and personal embarrassment to the grievor's supervisor.

The evidence before the Arbitrator further discloses, however, that the grievor's action, while not justified, is to some extent explained and mitigated by her medical and emotional condition, and by the history of her relationship with Mr. Turgeon. As the individuals in question continue to work together in a relatively small location, the details of that relationship need not be fully recounted here. Suffice it to say that the unrebutted evidence of Ms. Carriere establishes a long standing pattern of conduct by her supervisor that reflects a disturbing degree of insensitivity and poor taste, as well as repeated incidents of verbal, and in at least one documented case, written abuse of Ms. Carriere that can only be described as unprofessional. In short, the grievor's evidence, which stands unrebutted to the extent that Mr. Turgeon was not present at the hearing to contradict it, is that the grievor withstood a degree of ill treatment by her supervisor over several years which caused a reaction of extreme stress and resentment on her part. The state of the grievor's mental and emotional condition is substantiated by medical documentation. A certificate provided by her family physician confirms that she was under treatment on a regular basis for severe stress for approximately one year prior to June of 1991. She is described as having suffered depression, anorexia, weight loss and insomnia which, according to her doctor's account, appears to be related to what she described as ``harassment by her boss''.

Further evidence reveals that the grievor was in receipt of emotional counselling from a professional counselling centre in Cochrane as early as November of 1989, and attended some seventeen individual counselling sessions. The certificate of her medical health counsellor confirms that during that period she displayed signs of depression, anxiety, stress and sleep loss. The conditions described in these documents, which the Arbitrator accepts without reservation, were obviously no less burdensome to the grievor to the extent that she is a single mother responsible for the support and care of three children of relatively young age.

Counsel for the Union argues, in part, that no discipline was justified in the circumstances. He submits that the sending of the anonymous letter by the grievor was not work related. In the Arbitrator's view that characterization of the facts is not borne out by the preponderance of the very evidence on which the Union seeks to rely. It appears uncontradicted, as the Union asserts, that the grievor was driven by her unfair treatment at work to an irrational act which would, in the eyes of any objective observer, be characterized as intended to wreak vengeance on her supervisor and his family. The fact that the Company had relatively little difficulty in identifying the source of the communication supports the conclusion that it represents the kind of act which is likely to raise fears and concerns in the mind of any supervisor with respect to his or her ongoing ability to do his or her job and to relate to the employees under his or her responsibility. Supervisors, like employees, are entitled to work free of any apprehension that their actions in the workplace will be the cause of negative repercussions in their personal and family lives. On the whole, I am satisfied

that the incident is no less work related than it would be had the grievor chosen to assault Mr. Turgeon physically off Company premises because of his treatment of her at work. For these reasons I cannot accept the submission of the Union that the incident is not work related and is not deserving of some degree of discipline. The issue then becomes what is the appropriate measure of discipline in the circumstances. The Arbitrator accepts the evidence of the grievor, confirmed by medical documentation and not substantially rebutted by the Company, that she was under severe personal stress due in substantial part to a sustained pattern of unprofessional treatment by her supervisor. The record reveals that she filed a complaint with respect to the harassment which she endured, by way of a letter on November 6, 1989. Unfortunately, matters did not improve between that time and April of 1990 when the incident giving rise to this grievance occurred.

I am, on the whole, inclined to accept Ms. Carriere's evidence that there was a high degree of provocation for her infraction in the conduct of her supervisor over a sustained period of time and that her stress and anxiety played a part in the events under consideration. Having reached that conclusion, however, I cannot absolve her of all blame in the clearly unacceptable form of response which she chose to visit on her supervisor in his personal and family life. It should be stressed that while the medical evidence tabled at the hearing confirms depression and stress experienced by Ms. Carriere, there is nothing in the medical opinions offered to suggest that she was ultimately incapable of appreciating the nature and quality of her act in delivering an anonymous letter of disturbing personal content to Mr. Turgeon and his wife. Given the extremity of her action, notwithstanding the mitigating factors and her prior disciplinary record, I am of the view that, upon an appreciation of all of the facts, a ten day suspension would have been an appropriate measure of discipline in the circumstances, without the assessment of any demerits against her record. In my view that degree of discipline would have been appropriate to impress upon Ms. Carriere the gravity of her action, notwithstanding the events which may have provoked it.

For the foregoing reasons the grievance is allowed, in part. The grievor's record shall be amended to reflect the removal of the thirty demerits registered against her, and the thirty day suspension shall be reduced to ten days, with the grievor to be compensated accordingly for all wages and benefits lost.

June 14, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR