CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2478

Heard in Montreal, Thursday, 12 May 1994

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS [UNITED TRANSPORTATION UNION]

DISPUTE:

Assessment of thirty demerits on February 10, 1992 to Conductor Champagne of Melville, Saskatchewan for failure to comply with written instructions on January 9, 1992 issued by Assistant Superintendent Hedley in a personal letter dated November 26, 1991.

JOINT STATEMENT OF ISSUE:

On February 5, 1992 Conductor Champagne appeared for an investigation regarding various incidents including the January 9, 1992 incident, wherein Conductor Champagne referred to the Crew Dispatch as "sister", after being advised not to do so.

Following the investigation, Conductor Champagne was assessed thirty demerits for failure to comply with written instructions of a Company officer.

The Union appealed the discipline claiming that Conductor Champagne; (1) had not received a fair and impartial investigation; (2) the imposition of thirty demerits was not warranted or was excessive; (3) the statement of Conductor Champagne's record of demerits leading to this assessment is incorrect.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) J. W. ARMSTRONG	(SGD.) G. BLUNDELL
GENERAL CHAIRPERSON	FOR: SENIOR VICE-PRESIDENT, WESTERN CANADA

There appeared on behalf of the Company:

B. Laidlaw	_ Labour Relations Officer, Edmonton
R. Pelesh	_ District Superintendent Transportation, Saskatoon
R. Hedley	_ Project Manager, Transportation Services, Edmonton
J. Carron	_ Counsel, Montreal

And on behalf of the Union:

D. Ellickson	_ Counsel, Toronto
J. W. Armstrong	_ General Chairperson, Edmonton
L. H. Olson	_ President, UTU-Canada, Ottawa
B. Henry	_ Vice-General Chairperson, Edmonton
P. Champagne	_ Witness
P. Champagne	_ Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that the grievor did violate a direct Company instruction which had previously issued to him. In November of 1991 Mr. Champagne was given a written instruction that he was not to use the expression "sister" when addressing Winnipeg Crew Dispatcher Linda Dubyk. During the course of a telephone conversation on January 9, 1992, a recording of which was played at the hearing, Mr. Champagne repeatedly addressed Ms. Dubyk as "sister", notwithstanding her clearly expressed objection and anger.

The Union submits that the grievor's actions were, in part, provoked by the negative relationship which had existed between Mr. Champagne and Ms. Dubyk. The Union also suggests that there was nothing offensive intended in the use of the term "sister" by the grievor, as he frequently addressed fellow employees by the term "brother" or "sister" in light of his experience as a union officer.

In the Arbitrator's view the Company's representative is quite correct in suggesting that the grievor's belief as to the appropriateness of using the word "sister" in addressing a fellow employee is neither here nor there. Mr. Champagne was on notice from the Company that Ms. Dubyk did not wish to be so addressed, and he knew, or reasonably should have known, that it was offensive to her. During the course of the telephone conversation between them on January 9, 1992, although Mr. Champagne may have innocently used the word "sister" when he first addressed her, causing her to protest, it is clear that he continued to use the same word repeatedly for the sole purpose of antagonizing Ms. Dubyk. That resulted in her complaint to the Company and the disciplinary investigation which led to the penalty which is the subject of this grievance.

In the Arbitrator's view the sole issue is whether the amount of discipline assessed against the grievor is excessive. At the time of the incident he was an employee of twenty-six years' service, with ten demerits outstanding on his record. In my view the assessment of thirty demerits, fully half of the quantity sufficient for discharge, is excessive in all of the circumstances, and fifteen demerits would have been appropriate to convey to Mr. Champagne the importance of treating fellow employees in a manner that is both respectful and professional.

Upon a review of the material the Arbitrator cannot sustain the submission of the Union that the Company violated the provisions of the collective agreement in respect of providing a fair and impartial investigation in keeping with article 117.2 of the collective agreement.

For all of the foregoing reasons the grievance is allowed, in part. The grievor's record shall be adjusted to reflect the assessment of fifteen demerits for the incident of January 9, 1992.

13 May 1994

MICHEL G. PICHER
ARBITRATOR