

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2721

Heard in Montreal, Thursday, 11 April 1996

concerning

CANADIAN PACIFIC LIMITED

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE - UNION:

The assessment of thirty (30) demerits to CP Rail employee Nancy Holdbrook for allegedly providing false testimony during the course of an investigation of another employee.

DISPUTE - COMPANY:

The assessment of thirty (30) demerit marks to CSC spare employee Nancy Holdbrook for providing false testimony during the course of a sexual harassment investigation of another employee.

UNION'S STATEMENT OF ISSUE:

CP Rail employee Nancy Holdbrook was requested to attend an investigation on December 8, 1994 and provide testimony concerning the alleged sexual harassment of a CP Rail employee by another.

On January 19, 1995, Ms. Holdbrook was required to attend an investigation being conducted concerning her prior testimony on December 8. As a result of this investigation, Ms. Holdbrook was assessed thirty (30) demerits for allegedly providing false testimony during the investigation held December 8.

The Union submitted a grievance stating the discipline assessed was unwarranted and that the investigation of January 19 was improper. The Union also requested full compensation for the grievor who had been off on medical leave due to the stress and anxiety caused by the incident.

The Company declined the grievance.

COMPANY'S STATEMENT OF ISSUE:

On December 8, 1994 Ms. Holdbrook was requested to attend an investigation and provide testimony in connection with the alleged sexual harassment of a CP Rail employee by another.

On January 19, 1995, Ms. Holdbrook was requested to attend an investigation in connection with her testimony of December 8, 1994. As a result of the January 19, 1995 investigation, Ms. Holdbrook was assessed thirty (30) demerits for providing false testimony during the December 8, 1994 investigation.

The Union progressed a grievance stating that the discipline assessed was unwarranted and that the investigation of January 19, 1995 was improper. The Union also requested full compensation for the grievor who had been off on medical leave account stress.

The Company has declined the Union's grievance.

FOR THE UNION:

(SGD.) R. PAGÉ

EXECUTIVE VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) C. GRAHAM

FOR: GENERAL MANAGER, OPERATIONS & MAINTENANCE

There appeared on behalf of the Company:

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| S. Moutinho | – Labour Relations Officer, Montreal |
| C. M. Graham | – Labour Relations Officer, Montreal |
| M. Hallam | – Employee Relations Officer, Montreal |

And on behalf of the Union:

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| M. Prebinski | – Director, Education, Ottawa |
| R. Pagé | – Executive Vice-President, Montreal |
| N. LaPointe | – Assistant Division Vice-President, Montreal |
| P. J. Conlon | – Assistant Divisional Vice-President, Toronto |

AWARD OF THE ARBITRATOR

The record discloses that during the course of a telephone conversation with Company Officer Michael Hallam, on November 30, 1994, the grievor provided information to the effect that she had been touched on the shoulders and back by a male employee who was then the subject of a sexual harassment complaint made by another female employee. Mr. Hallam was attempting to investigate, in a general way, the male employee's conduct with females in the workplace. It appears that Ms. Holdbrook indicated to Mr. Hallam that she dealt with the problem herself, by telling the employee in question to stop, which he did. During the course of that conversation Ms. Holdbrook also admitted having given similar information to her supervisor, Mr. Robert Tisdelle. It appears that she then indicated to Mr. Hallam that she did not want to become involved in someone else's complaint, and that while she had been touched by the individual a number of times, she had never seen him touch anyone else. She also indicated that she did smell "day after booze" on the male employee's breath during the period of time he was training her.

Later the same afternoon Ms. Holdbrook called Mr. Hallam. She again stressed that she did not want to become involved in another employee's complaint. When Mr. Hallam tried to indicate the importance of obtaining corroborating evidence for the purposes of the other female employee's sexual harassment complaint, the grievor responded that should a formal complaint be lodged by that employee, and should she be asked what she knew, she would answer that she knew nothing. Mr. Hallam then cautioned her that that would be lying and could place her in a position of jeopardy with respect to possible discipline.

The sexual harassment complaint filed by the other employee then proceeded to the stage of a formal investigation. As part of that investigation the grievor was interviewed on December 8, 1994. During the course of that interview she categorically denied having been the subject of sexual harassment by the employee in question. When pressed as to the content of her prior telephone conversation with Mr. Hallam she recounted "He mentioned that I was trained with him, asked if I had any problems with W., sexually. I said 'No: none whatsoever'. That's it." During the course of her statement Ms. Holdbrook made it clear that she resented being involved in "something that I didn't start". At no time during the course of the December 8th interview did Ms. Holdbrook confirm her prior statements to Mr. Hallam to the effect that she had been touched on a number of occasions by the male employee, and had been required to tell him to stop. She also denied having ever detected any odour of alcohol on the employee's breath and later specifically said that she had answered "No" to Mr. Hallam when asked if she had smelled alcohol on his breath in the morning.

As a result of the substantial inconsistency in the statements made by the grievor to Mr. Hallam on November 30th, and her answers during the course of the disciplinary investigation concerning the accusation of sexual harassment against the male employee, held on December 8, 1994, the grievor was convened to a separate investigation into her alleged false statements during the course of the prior investigation. That interview was convened on January 19, 1995. During questioning the grievor conceded that she had made an inconsistent statement with respect to the smell of alcohol on the employee's breath in the morning. She did, however, continue in her denial of having admitted to Mr. Hallam on the telephone on November 30th that she had been touched

repeatedly by the employee in question. She also denied any recollection of having told Mr. Tisdelle about such touching.

It is common ground that the sexual harassment complaint filed by the other female employee was ultimately successful, and the male employee, represented by the same Union, was disciplined. No grievance is brought against the discipline assessed to him. However, the Company viewed the grievor's refusal to cooperate during the course of the investigation into the other employee's complaint as a serious disciplinary infraction, for which she was assessed thirty demerits.

The Union asserts that the instant case must be understood in the context of the sensibilities of a female employee who may have wished to deal with the problem of a male employee's physical advances in her own way, and for whom it might be difficult to become involved in a formal complaint. While this Office is not without some understanding of the sensibilities which can come to bear in dealing with allegations of sexual harassment (*see CROA 1791, Re Canadian National Railway Co. (1988), 1 L.A.C. 4th, 183 (M.G. Picher)*), a close review of the record in the instant case leaves some substantial question as to the candour and motives of the grievor during the course of the events under scrutiny. It does appear that she did not feel herself harassed by the male employee, and believed she was capable of handling the situation by telling him to stop and, at one point, requesting a change of instructor.

There can be little doubt that the grievor was given to understand that the information which she could provide would be of importance to the extent that corroboration, or the proving of a pattern of conduct, can be important elements in proving sexual harassment. Nor does it appear that she had initial reluctance to relate her experiences to either Mr. Tisdelle or Mr. Hallam. It is only later, as it became evident that the matter might mature to a more formal investigation, that the grievor finally asserted that she would deny everything if asked. With the greatest respect, that is not an option which was then legitimately open to her. Victims and witnesses, however sensitive, cannot claim a license or privilege that shelters them from telling the truth. Nor does it appear, on the evidence, that the grievor ever stated to the employer that she was feeling stressed as a result of the investigation or could not cope, on a personal level, with repeating the statements which she had made to Mr. Hallam and to Mr. Tisdelle.

The grievor's dishonesty should not be seen as necessarily benign. Had the other employee who complained of sexual harassment not been believed through lack of corroboration, that employee might herself have been subject to discipline for bringing false charges, and the male employee might have continued to harass other female employees who might well, in the circumstances, have felt powerless to complain. While at first blush the case might raise concerns about overbearing conduct on the part of the Employer, a close review of the record confirms that the Company acted fairly and in good faith. The Arbitrator must find that, for reasons which she best appreciates, Ms. Holdbrook did carry out her stated intention to deny facts previously disclosed by her, which were material to the investigation of a sexual harassment complaint made by another employee.

As difficult as issues of sexual harassment may be for the individuals involved, they do not abrogate the application of normal principles of honesty and integrity in matters of importance between employer and employee. In the result, I am compelled to the conclusion that the grievor was deserving of discipline for her refusal to provide pertinent information, to the point of lying, in statements which she made during the course of the Company's investigations on December 8, 1994 and January 19, 1995. In the circumstances I am satisfied that the assessment of thirty demerits was within the appropriate range of discipline. For the foregoing reasons the grievance must be dismissed.

April 12, 1996

(signed MICHEL G. PICHER
ARBITRATOR