

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2807

Heard in Montreal, Thursday, 12 December 1996

concerning

ONTARIO NORTHLAND RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Dismissal of Trainman James Kenney.

JOINT STATEMENT OF ISSUE:

On January 19, 1996, an incident occurred where two passengers were left on the Northlander train at Cochrane. The passengers subsequently complained to the Company and, as a result, an investigation was conducted with Mr. Kenney.

Following the investigation, Mr. Kenney was assessed 50 demerit marks for "failing to ensure the safety of two (2) passengers by not confirming that they had detrained at the station in Cochrane, thereby abandoning them in the train on the shop track at Cochrane, the evening of January 19, 1996.

The result was that when added to the demerit marks he already had on his file, Mr. Kenney was dismissed from service for accumulation of demerit marks.

The Union contends that the discipline assessed was excessive and unwarranted in the circumstances. The Union requests that the discipline assessed against the grievor be removed and that he be reinstated forthwith without loss of seniority and with full compensation for all earnings lost as a result of this matter.

The Company contends that the discipline is appropriate and denied the Union's request.

FOR THE UNION:

(SGD.) K. L. MARSHALL
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. D. KNOX
DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

M. J. Restoule – Manager, Labour Relations, North Bay

And on behalf of the Union:

K. L. Marshall – General Chairman, North Bay
P. Konig – Local Chairman, North Bay
J. Kenney – Grievor

AWARD OF THE ARBITRATOR

Trainman Kenney was dismissed as a result of a letter of complaint filed with the Company by two passengers. The passengers, described as a woman in her thirties and her elderly mother, were travelling to Hearst, Ontario on the Northlander train on the evening of January 19, 1996. The Northlander terminates its run at Cochrane, where passengers are transferred to a bus for the remainder of the trip to Hearst. According to the letter of complaint filed by the two passengers, they fell asleep before the train approached Cochrane, were not awakened by any crew member when the passengers detrained, and remained on the train, still sleeping, while it proceeded over the wye to be turned around. According to their evidence, they did not awaken until the train was placed in its normal out of service storage location, at or near the coach dump station. By their account, the two passengers awoke to find themselves alone on the train, at a location away from the station platform late on a cold winter's night. It appears that the lights were still on aboard the train, and, that the two ladies were able to pry open a door and jump to the ground with their luggage. They made their way by foot through bitter cold and snow, for a period which they estimated at five minutes, to reach the station where they joined the other passengers and were able to make their bus connection, albeit after complaining strenuously to the Customer Services Sales Agent who was then on duty.

It is common ground that the passengers in question were aboard one of two passenger coaches on the train, a coach which was the responsibility of Trainman Kenney. When the Northlander train arrived at Cochrane, Mr. Kenney was responsible for detraining the passengers from the lead coach, which is the coach in which the complaining passengers were seated.

Mr. Kenney's recollection is that as the train approached Cochrane he lifted all of the passengers' hat checks, including the complaining passengers', advising them that they would need the hat checks for the bus trip to Hearst. He further states that he had occasion to walk through the train twice after it arrived at Cochrane, during the process of putting the train away. On neither occasion, he states, did he see the two ladies in question, and their baggage.

The Union challenges the credibility of the complaint made by the two passengers. Firstly, it notes the grievor's own testimony that he did walk through the coach in question at least twice, during the process of turning and the spotting the train. Secondly, it stresses the evidence of the locomotive engineer to the effect that the train was in fact stored within 100 metres of the train station, as compared to the account of the ladies, who related that they were stranded 1,500 metres from the station, which is approximately one mile, and had to walk that entire distance, in five minutes, through bitter cold, carrying their luggage at times through waist deep snow. In the Union's submission, the obvious exaggeration of the facts reflected in the passengers' written complaint calls into question the credibility of the assertion of the complainants as to whether, in fact, they were asleep or, as the Union suggests, were perhaps in a washroom when the train reached its destination. In this regard the Union notes that train crews are not instructed to check washrooms when doing a final walk-through of a train at its destination terminal.

The Arbitrator can appreciate the credibility concerns expressed by the Union, when regard is had to the layout of the Cochrane yard and the placement of the train which, by the Company's own submission, was in fact stored within 100 metres of the station. That said, however, the Arbitrator is not prepared to discount entirely the obvious fright, discomfort and profound disturbance experienced by the two ladies, even if it is accepted that the distance they were required to walk, after perhaps jumping from the train onto the ground with their luggage, was in the order of 100 metres, rather than one mile. It is not disputed that it was bitterly cold, windy and snowy on the night in question. In the Arbitrator's view the Company has every reason to be seriously concerned with two passengers abandoned aboard an out of service train, whatever the circumstances.

There can be little doubt that the grievor must be seen as responsible for a degree of negligence in failing to pay sufficient attention to the whereabouts and detraining of the two passengers on the one coach for which he was responsible. The issue, in my view, is the appropriate measure of discipline. In approaching that question I feel compelled to give some weight to the mitigating factors raised by the Union on behalf of the grievor, particularly as regards the reliability of certain parts of the facts related by the complaining passengers. Plainly they were not, as they stated, left one mile away from the train station. Given that unreliability in their account of events, the suggestion of the Union's representative that they might, in fact, have been in a washroom when the grievor made his inspections of the coach is not altogether implausible. Certainly, there is no suggestion by the Company that Mr. Kenney in fact saw the ladies and deliberately left them aboard the train. Nor can it offer any direct evidence to

sustain the suggestion of its representative that in fact Mr. Kenney did not inspect the car, as he claims he did. That suggestion is discounted, at least in part, by the statement of Conductor Philip Clement, to the effect that after the train had detrained its passengers at Cochrane he observed Mr. Kenney in the lead passenger coach, from his position in the dining car. At that point, he relates, he communicated with Mr. Kenney by radio and was told that the grievor's coach was empty as "he was done unloading." Mr. Clement's account places Mr. Kenney in the coach at a time when the two passengers claim they were plainly visible, fast asleep. There is, therefore, some reason to question their precise location at that time. On the whole, therefore, I am not persuaded that the grievor's negligence, as serious as it was, was as gross or extreme as the Company asserts.

In the result, the grievance is allowed, in part. Given the seriousness of the grievor's failure to maintain reasonable care as to the whereabouts and well being of all of the passengers on his coach, I am satisfied that a substantial measure of discipline, short of discharge, is appropriate. The Arbitrator therefore directs that the grievor be reinstated into his employment, without compensation or benefits, and without loss of seniority. His period out of service shall be substituted as a suspension for his failure to safeguard his passengers, with his disciplinary record to be restored to the level of thirty-five demerits.

December 16, 1996

(signed) MICHEL G. PICHER
ARBITRATOR