

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2984

Heard in Montreal, Wednesday, 13 October 1998
concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND
GENERAL WORKERS UNION OF CANADA (CAW-CANADA)**

EX PARTE

DISPUTE:

The assessment of 25 demerits to Mr. W. Kopton (Customer Support Representative, Winnipeg) for alleged conduct unbecoming a Customer Support Representative.

UNION'S STATEMENT OF ISSUE:

Following a formal investigation, Mr. W. Kopton was assessed 25 demerits for allegedly displaying rudeness towards a CN Customer, hanging up on the Customer, and allegedly harassing the same Customer. It is common ground that Mr. Kopton did call the Customer after having been served notice to appear for a formal investigation.

It is the union's position that the discipline is unwarranted, and, if warranted too severe in the circumstances. While the Union admits that the phoning of the Customer may have been an indiscretion on the grievor's part; he did so only after asking his supervisor for the telephone statistics in preparation for his investigation. The supervisor refused and he felt the only way to verify if the initial conversation with the customer had taken place was to contact the customer himself. It is further the Union's position that the Company delayed in holding the investigation and that the discrepancies in the evidence would seem to support the grievor's position that the alleged phone call giving rise to the complaint did not happen. The Union further alleges that the investigative statement was not a "fair and impartial hearing" as per article 24.1 of agreement 5.1.

The Union is requesting the discipline be expunged from the grievor's record.

The Company denies the Union's request.

COMPANY'S STATEMENT OF ISSUE:

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The Company denies the Union's request.

FOR THE UNION:

(SGD.) Q. OLSHEWSKI

**NATIONAL REPRESENTATIVE
RELATIONS**

FOR THE COMPANY:

(SGD.) J. B. DIXON

FOR: ASSISTANT VICE-PRESIDENT, LABOUR

There appeared on behalf of the Company:

M. G. Sherrard	- Counsel, Montreal
B. Laidlaw	- HR/LR Associate, LeVerendrye District, Winnipeg
J. Dixon	- Business Partner, Pacific District, Vancouver
A. E. Heft	- Manager, Labour Relations, Toronto
K. Markoff	- Senior Manager, Operations, CSC, Winnipeg
A. Parke-Teillet	- HR/LR Associate, CSC, Winnipeg
K. Watson	- Counsel, Montreal
D. Borowski	- Customer Support Unit Manager, CSC, Winnipeg

And on behalf of the Union:

D. Olszewski	- National Representative, Winnipeg
R. Johnston	- President, Council 4000
V. Perinot	- Witness
W. Kopton	- Grievor

AWARD OF THE ARBITRATOR

There are two aspects to this grievance. Firstly, the Company alleges that the grievor, Mr. Wolf Kopton, spoke rudely on the telephone with the representative of a client company who called the Customer Service Centre, and spoke with Mr. Kopton in his capacity as a Customer Support Representative. The customer's representative wrote a letter of complaint to the Customer Service Unit Manager, Ms. Diane Borowski, on July 7, 1997 complaining of the grievor's attitude towards her during the course of their telephone conversation, said to have occurred on July 3, 1997.

Mr. Kopton denies having had any conversation with the customer in question on July 3rd. It is common ground that it was within the ability of the Company to verify its telephone records to determine specifically whether Mr. Kopton's telephone was the one which was connected to the

customer in question on the occasion of the alleged incident. However, for reasons which it best appreciates, the Company has not produced records to verify that indeed the grievor was the person who spoke with the complaining individual. Moreover, it appears that when the grievor was first notified of the alleged complaint, some eight days later on July 11, 1997, his attempt to trace his own call records would, according to Ms. Borowski's own evidence, have been too late. In the result, the Company, which employs upwards of 200 Customer Support Representatives is without any direct evidence to confirm that the telephone call in question did in fact involve Mr. Kopton. Additionally, the timing of its notice to him of the complaint effectively deprived him of the ability to obtain the records which would have confirmed or ruled out his own defence, which is that he never spoke with the individual in question on July 3rd.

It appears that in her complaint to Ms. Borowski the individual who called did indicate that she spoke with a person named Wolf, an obviously uncommon name. However, for reasons which it best appreciates, the Company did not inquire of Mr. Kopton as to his side of the story within a sufficient time to allow either party to evaluate his denial that he was the representative involved. In this regard it is not insignificant that Ms. Borowski was alerted to the customer's complaint by way of a telephone call from the customer on July 3, 1997. In the result, the Arbitrator is not satisfied that the Company has discharged the burden of proof with respect to the allegation that the grievor was the Customer Support Representative who spoke with the complaining customer on July 3, 1997. On this aspect, therefore, the grievance must be allowed.

The second part of the grievance concerns an event which is not in dispute. The record reveals that upon being advised of the complaint against him, Mr. Kopton telephoned the individual who had made the complaint against him, doing so against the advice of Ms. Borowski. The Arbitrator is satisfied that that conversation degenerated into an argumentative confrontation which obviously did little to improve relations with the customer in question. In fact, after the conversation with Mr. Kopton the customer's representative telephoned Ms. Borowski to complain about his call to her, and wrote a follow-up letter of complaint dated July 15, 1997.

The grievor does not deny having telephoned the complaining customer on July 11. Nor does he appear to dispute that the conversation took an unfortunate turn, and that the customer's letter of complaint in respect of that call was justified.

The issue then becomes the appropriate measure of discipline in the circumstances. While it is not possible to know with precision how the Company apportioned the demerits assessed against Mr. Kopton on the basis of the two separate phone calls, the first of which has not been sufficiently proved in these proceedings, I consider it reasonable to assess fifteen demerits for the telephone call of July 11, 1997, which admittedly occurred, and which was deserving of discipline.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the Company adjust the grievor's record to reflect the assessment of fifteen demerits for an inappropriate telephone conversation with a complaining customer on July 11, 1997.

November 2, 1998

MICHEL G. PICHER
ARBITRATOR