

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3008

Heard in Montreal, Tuesday, 8 December 1998

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The assessment of 30 demerit marks to Crew Dispatcher Frederick MacDonald for conduct unbecoming an employee as witnessed by his use of profanities and verbal assault towards fellow employees, a violation of Canadian Pacific Railway's Discrimination and Harassment Policy while working as a Crew Dispatcher on April 27, 1998.

JOINT STATEMENT OF FACT:

On April 27, 1998, an incident occurred at the Calgary Crew Management Centre. Mr. Frederick MacDonald addressed several fellow employees in a loud, abusive tone and used profane, offensive and degrading language.

Fellow employee Crew Dispatcher Ms. D. Julien, who was a bystander and witness to Mr. MacDonald's outburst, filed a complaint with the Company in regards to Mr. MacDonald's behaviour.

The Company conducted an investigation in accordance with article 27 of the collective agreement. Based on the facts gathered during the investigation, Mr. MacDonald's discipline record was assessed 30 demerit marks as a result of his unbecoming behaviour on April 27, 1998.

JOINT STATEMENT OF ISSUE:

The Union progressed a grievance arguing that the discipline assessed was excessive in the circumstances and requested that a caution would be more appropriate.

The Company denied the Union's grievance stating that the discipline assessed was appropriate.

FOR THE UNION:

(SGD.) **NATHALIE LAPOINTE**
DIVISION VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) **CAROL GRAHAM**
FOR: DIRECTOR, RCTC/CMC

There appeared on behalf of the Company:

C. Graham	- Labour Relations Officer, Calgary
R. Hampel	- Labour Relations Officer, Calgary
S. Sutherland	- Manager, CMC, Calgary

And on behalf of the Union:

P. J. Conlon	- Division Vice-President, Toronto
S. Mercier	- Local Chairman, Montreal
R. Surnmerside	- Local Representative, Montreal

AWARD OF THE ARBITRATOR

There is no dispute that the grievor utilized unacceptable language in the workplace, causing offence to others within earshot. It appears that upon discovering that certain printers were not properly reloaded with paper, in a loud voice, Mr. MacDonald blamed two male employees of the Crew Management Centre referring to the individuals as "you stupid cunts". Although the words were not addressed to her, employee Denise Julien overheard them and was deeply offended, being prompted to file a written complaint.

The Union does not deny that the grievor deserves some penalty for his actions. The sole issue in this dispute is the quantum of discipline. Thirty demerits were assessed against Mr. MacDonald for his conduct. The record before the Arbitrator confirms that on at least two prior occasions he has been disciplined for discourteous conduct. Ten demerits were assessed for an incident on January 21, 1985 and twenty demerits for an incident on May 21, 1987.

While much argument was directed by the parties to the level of acceptable "shop talk" within the workplace, a level which it is agreed has improved in recent years, the essence of the difference between them concerns whether the words and tone utilized by Mr. MacDonald can fairly be said to be harassing conduct in the workplace. While the Company does not suggest that there was sexual harassment involved in the grievor's actions, it submits that there was an unacceptable intention to demean the individuals addressed, to a degree which justified the discipline assessed. In the grievor's defence, the Union submits that the words which he used, although unacceptable, are not unknown in the workplace, and that mitigation should flow to some degree from the fact that he was in the late stages of a twelve hour shift during which he had had no lunch break.

Upon a review of the submissions, I am satisfied that there were mitigating factors, and that the grievor's words, as disturbing as they were, were not intended to demean the persons who were the subject of his insult. His words were plainly unacceptable in any professional work setting and, in light of his prior record, were deserving of a serious level of discipline. In considering the measure of discipline to be assessed, however, I deem significant that there appears to have been no discipline against Mr. MacDonald for similar behaviour for a period of some ten years prior to the incident in question. Moreover, given that

there was no intention to harass or demean the male employees who were the subject of the comment, I am satisfied that the assessment of twenty demerits would have been an appropriate measure of discipline in the circumstances, and that the grievor's record should be amended accordingly.

The grievance is therefore allowed in part. The Arbitrator directs that twenty demerits be assessed against Mr. MacDonald for the unacceptable use of profanities in the workplace on April 27, 1998.

December 14, 1998

MICHEL G. PICHER
ARBITRATOR