CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3105
Heard in Montreal, Thursday, 13 April 2000
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and
NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA)

DISPUTE:

The assessment of fifty demerit marks and fifteen days' suspension to Guy Verdi for insubordination.

JOINT STATEMENT OF ISSUE:

On July 27, 1999, Mr. Guy Verdi attended a disciplinary investigation for alleged insubordination on July 21, 1999. As a result of the investigation, the Company assessed fifty demerit marks and fifteen days'suspension to the record of Mr. Verdi for insubordination.

The Union alleges that the discipline is unwarranted and unduly severe and, furthermore, constitutes a double penalty.

Accordingly the Union requests that the disciplinary record be modified and that the employee be made whole.

The Company denies the Union's contention.

FOR THE UNION: **FOR THE COMPANY:**
(SGD.) **R. JOHNSTON** (SGD.) **S. GROU**
PRESIDENT, NATIONAL COUNCIL 4000 FOR:
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

J. Coleman	- Counsel, Montreal
S. Grou	- Manager, Employment Legislation, Montreal
D. Gagn6	- Terminal Manager, Monterm, Montreal
G. Chartrand	- Terminal Coordinator, Monterm, Montreal

And on behalf of the Union:

A. Rosner	- National Representative, Montreal

J. Savard - Bargaining Representative, Montreal
D. Boileau - Local President, Montreal
Y. Surducan - Grievor
0- Verdi - Grievor

AWARD OF THE ARBITRATOR

The facts in relation to this grievance, and a similar grievance filed on behalf of Mr. Y. Surducan **(CROA 3106),,** are not in substantial dispute. Mr. Guy Verdi, an employee of twenty-six years' service, and Mr. Yvon Surducan, a twenty year employee, were assessed fifty demerits and suspensions of fifteen and sixteen days respectively for their insubordination arising out of an incident concerning the wearing and distribution of T-shirts in the workplace, the wording on the T-shirts being openly contemptuous of management. The Tshirts, described at greater length below, were an initiative of the Union local, of which Mr. Verdi is the Recording Secretary and Mr. Surducan is VicePresident.

The record discloses that on July 19, 1999 Mr. Surducan came to work on the evening shift wearing an "Omega" T-shirt, and commenced being engaged in distributing similar T-shirts to other employees in the workplace. The T-shirt is bright orange/yellow in colour and bears the logo of the Union local, which refers to itself as Omega. The logo is presented as a closed fist punching through a surface, bearing the words 4c *Omega firappe encore *,* roughly translated at "Omega strikes again". Above the logo in bright red letters are the words 4(*Lincomp6tence des Boss * and* below the logo a *qa sarrcte ici! Poing final! * The* latter message would translate: "It stops herel Periodl", although the French version involves a play on the word * p*oing* P. It does not appear disputed that the wording of the T-shirt is loosely based on advertisements contained in an anti drinking/ driving campaign conducted by the Government of Quebec.

It appears that during the course of the evening shift the on-duty coordinator advised Mr. Surducan that the T-shirt was unacceptable at work
and that employees should not wear them. According to the documentation placed before the Arbitrator it would appear that a number of employees wore the T-shirts during the course of the evening shift.

The following morning Mr. Surducan came to work some two hours before the commencement of his shift, again wearing the T-shirt and distributing similar T-shirts to employees in the cafeteria. Mr. Surducan was then approached by

Supervisor Gadtan Chartrand and was told that the T-shirt was unacceptable and would not be tolerated on work premises. When instructed to remove the T-shirt himself Mr. Surducan refused. A subsequent order to the same effect by Terminal Manager Donald Gagn6 was similarly ignored by Mr. Surducan, who apparently stressed that he was not on duty and that in any event he should be given a written directive if the Company wished to persist in its position.

It appears that his request in that regard was taken seriously. Mr. Gagnd immediately prepared a written notice to all employees stating, in its English version:

> Please be advised that the wearing of any clothing items, buttons or hats with derogatory remarks, or that are inappropriate, will not be tolerated on CN property.
>
> Employees wearing such will be requested to remove them, and will not be allowed to come on duty while wearing them.
>
> While we respect out employees' rights to their opinions, CN's business image must be respected.
>
> Please be governed accordingly.

It appears that the above written directive was shown to Mr. Surducan when he was convened to meet with Mr. Gagn6 in his office, and was again requested to remove his T-shirt, or to turn it inside out if he insisted on
wearing it, both options of which he refused. On that basis he was removed from service pending a disciplinary investigation for insubordination.

The incident involving Mr. Verdi occurred the following day, July 21, 1999. Fully aware that Mr. Surducan had been suspended the day prior for wearing the Omega T-shirt, Mr. Verdi appeared at work wearing the same T-shirt, offering similar ones to other employees. When he was instructed by management to remove the offending T-shirt, and openly refused to do so, Mr. Verdi was likewise suspended pending an investigation. Following the investigation, and a further period of time to consider its action, the Company assessed fifty demerits against each of the grievors, with the period of time they were held out of service, being sixteen and fifteen days respectively, to apply as a period of suspension without pay.

It would appear that during the course of the disciplinary investigations the grievors were far from agreeing with the Company that their actions were inappropriate. For example, when asked to comment on his own actions at the investigation, Mr. Verdi stated that he was merely exercising his fundamental liberty of speech guaranteed by the **Canadian Charter of Rights and Freedoms,** which he specifically cited by paragraph. He also made it clear that the intention of the T-shirts was to communicate to the Company's customers. In that regard he commented, in part, in the Arbitrator's translation: "With this T-shirt we are communicating a message reflecting the intolerable situation which prevails in the yard, one of the results of which was yesterday's truckers' demonstration. That demonstration is also a message that there is something wrong in this yard. In fact, following the reduction of staff and equipment, service to our clients has deteriorated noticeably. We do not want to be scapegoats for this situation." There can be no doubt that the purpose of the Tshirts was to degrade the Company in the eyes of its customers.

During the course of argument representatives for both parties referred the Arbitrator to a number of prior awards involving either policy grievances or discipline concerning the wearing of T-shirts or promotional buttons in the workplace. The Company referred the Arbitrator to the decision of Arbitrator Craven in **Re National Steel Car Ltd. and United Steelworkers of America, Local 7135** (1998), 76 L.A.C. (4th) 176; **Re Convention Centre Corp. and Canadian Union of Public Employees, Local 500** (1997), 63 L.A.C. (4th) 390 (Freedman); **Re The Bay (Windsor) and Retail, Wholesale and Department Store Union, Local 1000** (1990), 16 L.A.C. (4th) 298 (Shime); **Re Hilton International Qu6bec et Syndical de travailleuses et travailleur de llho^tel Hilton, Quebec, (CSN)** [1986], T.A. 87 (Sylvestre); **Re Schneider et Le Conseil du tr6sor (D6partement des Postes),** an unreported decision of the Public Service Staff Relations Board of Canada dated March 19, 1979 and **CROA 1117.** The Union's representative draws to the Arbitrator's attention to two awards: **Re Fireco Inc. and United Steelworkers** (1987), 29 L.A.C. (3d) 250 (Schiff); and **Re Corporation of the City of London and London Civic Employees Union, Local 107** (1978), 19 L.A.C. (2nd) 147 (Kruger), as well as a number of prior awards of this Office dealing with general principles relating to insubordination.

The Union's representative does not argue that the grievors were not deserving of some discipline for their actions. His submissions go the level of penalty which is appropriate in the circumstances. Based on an analysis of prior

reported decisions of the CROA involving penalties for insubordination, the Union's representative submits that the assessment of fifty demerits coupled with a fifteen or sixteen day suspension is excessive in the circumstances, given the longevity of the grievors' prior service and the fact that neither of them has been previously disciplined for a similar infraction.

I turn to consider the merits of the dispute. In doing so I find it difficult to overstate the Arbitrator's reaction to the actions of the grievors. While difficulties in the bargaining relationship between these parties, and a number of the personalities involved, are a matter of painful record in this Office, nothing, in my view, can justify the carrying out of a deliberate and organized campaign within the workplace calculated to bring clear contempt and ridicule upon the Company and its managers. With the greatest respect to the submissions made by the Union's representative, this case involves more than a mere refusal to follow a directive. It concerns the length to which the grievors were prepared to go to embarrass their supervisors and to bring the Company which employs them into public ridicule. The fact, as revealed in the answers given by the grievors in their investigations, that they would seek to clothe their defamatory campaign in the protections and legitimacy of the **Canadian Charter of Rights and Freedoms** raises genuine concern as to their good faith and their ability to know right from wrong. Fundamental rights of association and expression, and the right to engage in collective bargaining, which is itself a powerful instrument in the promotion of human dignity, cannot be invoked to defend or legitimize such scornful and disrespectful conduct in the workplace.

Nor can the Arbitrator accept the suggestion of the Union that the Company kept the grievors out of service for an unduly long period. Article 23.6 of the collective agreement reads, in part, as follows:

> 23.6 Employees will not be held out of service pending the decision except in the case of a dismissable offense.

I am amply satisfied that the actions of both grievors fell within the realm of a dismissable offense. In the decision of the Public Service Staff Relations Board cited above the tribunal sustained the discharge of an employee who engaged in very similar conduct, attending work in a postal facility wearing a T-shirt emblazoned with the words "Management sucks".

The instant case does not involve a Union officer resorting to strong language on

the spur of the moment in the course of performing his or her union responsibilities in dealing with management. The grievors in the case at hand involved themselves in a concerted plan, carried out over some time, to design, produce, wear and distribute T-shirts to be worn on the Company's premises for the sole purpose of insulting and embarrassing the Company and its managers in the eyes of the public, including the Company's customers. When instructed to do so, they refused to remove the T-shirts. Such conduct is gravely inconsistent with the most basic obligation of the grievors' employment relationship, and goes well beyond the bounds of lawful union activity. The grievors appear to have intended to provoke an embarrassing incident. Whatever their intent, they knew or reasonably should have known that their actions would be deserving of a serious degree of discipline.

Nor am I persuaded that it was not appropriate, in the extreme circumstances of this case, for the Company to have resort to a mixed penalty, declining to compensate the grievors for the period of time they were held out of service pending a decision as to their discipline, coupled with the assessment of demerits. That said, however, the fact remains that the assessment of fifty demerits is in an extremely high range, regard being had to the length of service of the employees concerned, and the fact that as extreme as their actions were, they did constitute a first infraction. In the Arbitrator's view while interference with the Company's decision should not lightly be undertaken, it is appropriate to reduce the demerits assessed against Mr. Verdi and Mr. Surducan to forty, for what may fairly be characterized as a cardinal form of open and protracted insubordination.

The grievance is therefore allowed, in part. The Arbitrator directs that the demerits assessed against the grievors be reduced to forty, and dismisses the grievances with respect to the issue of the suspensions and any related compensation.

April 14, 2000

MICHEL G. PICHER
ARBITRATOR