CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3129
Heard in Montreal, Wednesday, 12 July 2000
concerning
CANADIAN PACIFIC RAILWAY COMPANY
and
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)

**DISPUTE:**

Discipline of 45 demerit marks assessed the record of Mr. M.L. Douglas.

**JOINT STATEMENT OF ISSUE:**

Mr. Douglas was assessed discipline for his conduct during classroom training in Remote Control Locomotive Systems (Belt Pack Operations) on March 4, 1999.

The Council contends that the investigation was not conducted in a fair and impartial manner and therefore, the discipline should be expunged *ab initio.* In the alternative, the Council contends that on the basis of the merits of the case, a strong personality conflict existed between the two parties to the incident and that there was equal blame assessable to both parties to the incident. In view of this, the Council contends that equal treatment for the behaviour was warranted and asked that the Company resolve the issue by substituting the same treatment afforded to the second party to this conflict to Mr. Douglas, which would result in the removal of the discipline assessed.

The Company's contention is that the grievor received a fair and impartial investigation and that the facts gathered during the investigation established responsibility on Mr. Douglas. The Company has declined the Council's grievance requesting the removal of the discipline assessed.

| FOR THE COUNCIL: | FOR THE COMPANY: |
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| (SGD.) L. 0. SCHILLACI | (SGD.) C. M. GRAHAM |
| GENERAL CHAIRPERSON | FOR: GENERAL MANAGER, FIELD OPERATIONS, |

There appeared on behalf of the Company:

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| M. E. Keiran | - Director, Labour Relations, Calgary |
| C. M. Graham | - Labour Relations Officer, Calgary |
| 1. V. Roberts | - Witness |
| R. P. Zeglinski | - Manager, Yard Operations, Port Coquitlam |
| R. H. Strelesky | - Manager, Road Operations, Port Coquitlarn |

And on behalf of the Council:

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| L. 0. Schillaci | - General Chairman, Calgary |
| M. L. Douglas | - Grievor |

AWARD OF THE ARBITRATOR

Upon a review of the evidence it appears clear to the Arbitrator that the grievor, Conductor Murray L. Douglas, did engage in conduct deserving of some discipline.

It is common ground that Mr. Douglas attended classes in RCLS or beltpack training which were taught by fellow conductor Ian Roberts, who was accredited for giving such instruction. Although Mr. Douglas was scheduled to follow a full two-week course, he was ordered withdrawn from the course by Yard Manager Ray Strelesky following complaints by Mr. Roberts that it had become extremely difficult for him to deal with Mr. Douglas.

Although the material and evidence before the Arbitrator is relatively extensive, the facts can be briefly summarized. At the time of the incidents in question Mr. Douglas held the union office of local chairman for road employees. In that capacity he was strongly opposed to beltpack training being given by bargaining unit employees. His view was apparently consistent with a resolution passed by the local, opposing the use of union members to train yard helpers, yard foremen, trainpersons and conductors in the operation of the beltpack. Although beltpack switching by bargaining unit members is assigned pursuant to an agreement with the Union, it appears that the Vancouver local has been less than enthusiastic in accepting a technological change which it views as limiting the work opportunities of locomotive engineers. There is no dispute that Mr. Douglas made no secret of his antipathy to beltpack training being performed by bargaining unit members such as Mr. Roberts.

The evidence of Mr. Roberts establishes that the relationship between himself and Mr. Douglas as his trainee was extremely strained from the beginning. He described the grievor as slow and uncooperative in the classroom, as well as in field exercises. According to his evidence during class the grievor would voice his negative views of the beltpack program, including the training system. Matters came to a head at approximately 18:00 hours on March 4, 1999 when, during a break, Mr. Douglas unleashed an angry tirade at Mr. Roberts for his involvement in the beltpack program. Among other things he stated that he viewed Mr. Roberts as no better than a scab for the work that he was doing and commented, in part, that he hoped that Mr. Roberts would not go back to work as a yardperson, because he would be sorry if he found that Doualas was his foreman.

The grievor responds that he did openly express his views about the beitpack training program, and made it clear to Mr. Roberts that he did not approve of him being involved in training while accumulating seniority as a bargaining unit member. According to his account, however, such remarks were not made during the course of actual classroom training, but rather in the context of lunch or smoke breaks. He does not deny the strength of some of the words which he utilized with Mr. Roberts, however.

In assessing the facts at hand, the Arbitrator is satisfied that Mr. Douglas allowed his personal views, and arguably his union office, to stray over the line so as to become an impediment to the orderly pursuit of the training course being given by Mr. Roberts. Even accepting that Mr. Douglas' negative remarks towards Mr. Roberts were principally made during lunch and

smoke breaks, the fact remains that he consciously and repeatedly engaged in insulting and intimidating language with a fellow employee in the workplace. While boards of arbitration generally, and this Office in particular, have long recognized that the workplace is not a tea party and that there is room for a certain degree of shoptalk, all employees know the difference between general banter, sometimes in coloured terms, and deliberate personal insults and threats. Regrettably, on the facts at hand the Arbitrator is compelled to conclude that Mr. Douglas failed to recognize the difference, and that he did engage in unacceptable insults of Mr. Roberts, including intimidating comments with respect to his seniority, his loyalty to the Union and the veiled possibility of reprisals at a later time. Such comments have no place in the workplace, and are generally recognized by those who truly value the role of a union and collective bargaining as having no such place. It is of little consequence that the grievor chose to threaten and insult Mr. Roberts during work breaks. In the result the Arbitrator is compelled to conclude that Mr. Douglas did make himself liable to discipline.

The Council objects to the conduct of the disciplinary investigation leading to the discipline of forty-five demerits assessed against Mr. Douglas. Upon a review of the record the Arbitrator cannot sustain that objection. It is apparently based upon certain turns of phrase used by the investigating officer in questioning Mr. Roberts. According to the Council's representative the way certain questions were put pre-supposed wrongdoing on the part of Mr. Douglas.

In **CROA 2073** the following comments were made:

As previous awards of this Office have noted (e.g. **CROA 1858),** disciplinary investigations under the terms of a collective agreement containing provisions such as those appearing in Article 34 are not intended to elevate the investigation process to the formality of a full-blown civil trial or an arbitration. What is contemplated is an informal and expeditious process by which an opportunity is afforded to the employee to know the accusation against him, the identity of his accusers, as well as the content of their evidence or statements, and to be given a fair opportunity to provide rebuttal evidence in his own defence. Those requirements, coupled with the requirement that the investigating officer meet minimal standards of impartiality, are the essential elements of the "fair and impartial hearing" to which the employee is entitled prior to the imposition of discipline. In the instant case, for the reasons related above, I am satisfied that that standard has been met.

The awards of this Office recognize that disciplinary investigations are conducted by lay persons, not lawyers or judges, and that considerable latitude must be allowed for informal expression. While the Arbitrator has commented that the investigating officer cannot, as a general rule, display obvious bias in the conduct of an investigation **(CROA 2934)** that standard has clearly not been violated on the evidence before me in the case at hand. Nor does the fact that the investigating officer, Mr. Strelesky, had initially responded to the complaint of Mr. Roberts by removing Mr. Douglas from the training course, a decision well within his supervisory authority, disqualify him from conducting the ensuing investigation on the basis of bias. Faced with Mr. Roberts complaint Mr. Strelesky had little alternative but to end Mr. Douglas' participation in the course, even though he might not have formed a final opinion as to the precise facts. In the circumstances the Arbitrator can find no violation of the

standard of fair and impartial investigation as contemplated under article 32(d) of the collective agreement.

The real issue in the case at hand is the appropriate measure of discipline. I find that the assessment of forty-five demerits is harsh in all of the circumstances. Firstly it should be remembered that removal from the course itself operated as form of penalty upon Mr. Douglas, to the extent that his eventual certification to protect beltpack work was delayed for several months, a factor which could bear on his own job security. More fundamentally, what transpired was in the nature of disrespectful conduct towards a fellow employee, arguably comparable to cases involving insubordination towards a supervisor, although the analogy is not perfect. Although it is true that Mr. Douglas does have prior incidents of poor temper control on his record, his disciplinary record was clear at the time of the incident in question. In the circumstances I am satisfied that the assessment of twenty demerits would have been sufficient to bring home to Mr. Douglas the importance of keeping his temper in check, of not allowing his personal views, however strongly held, to poison his own working environment and, most importantly, to treat all employees with respect, and without resort to threats and insults.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor's dsciplinary record be adjusted to reflect the assessment of twenty demerits for the grievor's unacceptable personal conduct towards Mr. Roberts in the RCLS training program.

July 14, 2000

MICHEL G. PICHER
ARBITRATOR