CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3168
Heard in Calgary, Thursday, November 16, 2000
Concerning
CANADIAN NATIONAL RAILWAY COMPANY
And
NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION
AND GENERAL WORKERS OF CANADA
EX PARTE

DISPUTE - UNION:

Discipline of Train Movement Clerk C.P. Kupidy, Jasper, Alberta. Record debited 20 demerits.

DISPUTE - COMPANY:

Appeal of the discipline assessed Train Movement Clerk C.P. Kupidy, Jasper, Alberta, for conduct unbecoming an employee of Canadian National Railway.

UNION'S STATEMENT OF ISSUE:

On December 6, 1999 Canadian National Railway held an investigation of Train Movement Clerk, Chris Kupidy in connection with: "alleged harassment of Annette Brown".

On December 7, 1999 Canadian National Railway held an investigation of Annette Brown in connection with: "the harassment charge against Mr. Chris Kupidy, TIVIC, Jasper."

According to the Company discipline form, dated December 21, 1999 signed on December 22, 1999, the Company debited Chris Kupidy's record with 20 demerits effective December 1, 1999 for: "Conduct unbecoming an employee of Canadian National Railway."

On February 1, 2000 Canadian National Railway held an investigation of Train Movement clerk, Chris P. Kupidy in connection with: "formal complaint alleging harassment from CN employee Annette Brown."

On February 11, 2000 Canadian National Railway held an investigation of Train Movement Clerk Annette Brown in connection with" "formal alleged harassment charge brought forward by C. Kupidy former train movement clerk, Jasper.

It is the contention of the Union that: (1) the Company did not establish a violation of the Company harassment policy and therefore had no cause to discipline Chris P. Kupidy, former train movement clerk, Jasper. (2) the Company did not establish sufficient culpability in regard to the matter at hand and therefore had no cause to discipline Chris P. Kupidy, former train movement clerk. Jasper. (3) even if the Company had established sufficient culpability they, (the Company) did not discipline the other party involved and therefore had no basis from which to issue discipline to C. Kupidy, former train movement clerk, Jasper. (4) the Company treated C. Kupidy, former train movement clerk, Jasper, in an arbitrary, discriminatory and excessive manner in regard to the discipline issued.

Therefore, with regard to the foregoing, it is the position of the Union that the twenty (20) demerits debited against the record of Chris P. Kupidy, former train movement clerk, Jasper, should be removed from his record in their entirety.

The Company disagrees with the Union's position.

COMPANY'S STATEMENT OF ISSUE:

On December 01, 1999, Ms. Annette Brown, train movement clerk in Jasper, submitted a letter of complaint to the Company, alleging harassment by Train Movement Clerk, C.P. Kupidy.

On December 06, 1999 Canadian National Railway conducted an investigation with Mr. Chris Kupidy in connection with his alleged harassment of Ms. Annette Brown on November 29, 1999.

The investigation revealed that the grievor had exhibited unacceptable behaviour in the workplace. Accordingly, his discipline record was assessed 20 demerits effective December 01, 1999 for: "Conduct unbecoming an employee of Canadian National Railway."

The Union's position is that the Company did not establish sufficient culpability and therefore had no cause to discipline Chris Kupidy. The Union also contends

that the Company treated C. Kupidy in an arbitrary and excessive manner in regard to the discipline issued, and as a result, the twenty (20) demerits assessed Mr. Kupidy's record should be removed in their entirety.

The Company disagrees with the Union's position.

FOR THE UNION: FOR THE COMPANY:
(SGD.) R. JOHNSTON (SGD.) K. MORRIS
PRESIDENT, COUNCIL 4000 FOR: VICE-PRESIDENT, LABOUR RELATIONS

Appearing on behalf of the Company:

S. Blackmore - Labour Relations Associate, Edmonton

Appearing on behalf of the Union:

B. McDonagh - National Representative, Vancouver

B. Kennedy - Regional Representative - Mountain Region, Council 4000

AWARD OF THE ARBITRATOR

It is not disputed that the grievor, Mr. C. Kupidy, uttered an insulting, derogatory and lewd insult about another employee, Ms. Annette Brown. Following an investigation, the Company determined that the grievor's outburst constituted conduct unbecoming an employee of the Company, and assessed twenty demerits against his disciplinary record.

While there is some dispute as to the precise words used by the grievor with respect to Ms. Brown, Mr. Kupidy does not deny that he did resort to words of a fourletter variety in expressing his displeasure about Ms. Brown. It is common ground, however, that he did not express those words in her presence. The grievor's evidence is that during his tour of duty on November 29, 1999, when Ms. Brown was apparently was not at work, Mr. Kupidy was approached by Conductor Ken Middleton and requested to assist him in photocopying certain papers. It is common ground that the photocopying in question was entirely in relation to a junior hockey program, for the benefit of Ms. Brown who was apparently involved as a volunteer. The undisputed evidence of Mr. Kupidy is to the effect that Ms. Brown's hockey involvement occasioned a number of disruptions in the workplace, including a substantial volume of incoming telephone calls and messages, sometimes being handled by other employees. As appears from the evidence before the Arbitrator, the grievor resented the

intrusion on his own work, and did use four-letter language with Mr. Middleton with reference to Ms. Brown when he was asked to involve himself in the photocopying exercise. Subsequently Mr. Middleton related the comments to Ms. Brown, which occasioned a formal complaint to the employer, the ensuing disciplinary investigation and the eventual assessment of twenty demerits against the grievor's record.

It appears that Ms. Brown's complaint also referred to a telephone call which Mr. Kupidy made to her at her place of residence, apparently falsely accusing her of having turned him in to their supervisor. Ms. Brown denied the allegation and simply hung up on the grievor, although she describes having been disturbed at receiving such a telephone call at home. The grievor does not deny having made the telephone call.

It does not appear disputed that there was relatively extensive history of bad blood between Mr. Kupidy and Ms. Brown. During the course of her own examination, on a counter complaint registered against her by Mr. Kupidy, she admitted that on at least one prior occasion she had called him a "fucking asshole."

Something of the flavour of the relationship between the grievor and Ms. Brown is reflected in part of the grievor's statement, which is essentially unrebutted before the Arbitrator, and reads as follows:

> ... For the past three years Annette will attempt to draw me into a conversation that is fairly benign then turn the conversation to something contentious. For example something regarding the number of times she has done something for me and how I owe her. Often times these conversations result in her swearing at me. She has attempted to lecture me on my personal life which I felt was inappropriate. For example personal questions about my marriage, questions about my sex life, questions about my sleep problems. She does this in public which causes me to believe she is trying to hurt me, not help. I've asked Annette many times what it is I can do to fix the situation between us. I have threatened to turn her in for her abusive behaviour, but unfortunately I did not follow through. I could not work a mutual one day for her and as a result she accused me of ruining her child's birthday party. Her husband, Warren Brown, calls me grumpy and smiley alternately. I've made it know to him that I don't appreciate his comments. In closing, I just want to add that I've

> been with CN fQr 19 years, and in that time I've never been assessed demerits for any reason. My work record is good, and I have never been accused of anything like this before either formally or informally, and I'm very hurt by these charges. ...

The Arbitrator is satisfied that the grievor did use intemperate and unacceptable language in reference to Ms. Brown, albeit out of her presence, in a manner which would justify some degree of discipline. I am not prepared to conclude that the telephone conversation between Mr. Kupidy and Ms. Brown was of itself deserving of such a response, as it appears that a number of telephone conversations of that type have been made between them over a considerable period of time. Even if I were to accept Mr. Middleton's account, which is that the grievor's outburst was prompted by his belief that Ms. Brown had turned him in, and was not prompted by the photocopying exercise and Ms. Brown's hockey activities, I would still be compelled to view this situation as one which does involve some degree mitigation in favour of the grievor. On the whole, I am satisfied that, particularly in light of the grievor's prior disciplinary record, a letter of reprimand, reminding Mr. Kupidy of the importance of displaying respect for fellow employees at all times, would be a sufficient measure of discipline.

The grievance is therefore allowed, in part. The Arbitrator directs that the twenty demerits assessed against Mr. Kupidy be removed from his record, and that a letter of warning or reprimand be substituted.

November 20, 2000

MICHEL G. PICHER
ARBITRATOR