CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3174
Heard in Montreal, Wednesday, 13 December 2000
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and
NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA)
EX PARTE

DISPUTE:

Discipline issued against, and the subsequent dismissal of, Train Movement Clerk G.J. Rothon, Transportation Reporting Services, Toronto, Ontario.

EX PARTE STATEMENT OF ISSUE:

According to the Company discipline form, on May 2, 2000 the record of TIVIC G.J. Rothon was assessed 40 demerits for: "conduct unbecoming an employee of the Company by making unsubstantiated allegations against and causing aspersions on specific supervisors and staff." The effective date of the discipline is indicated as August 13, 1997.

According to the second Company discipline form, on May 2, 2000, TIVIC G.J. Rothon was discharged from service for: "Accumulation of demerit marks."

It is the contention of the Union that: the Company treated Train Movement Clerk [G.J. Rothon] in an arbitrary, discriminatory and excessive manner in regard to his dismissal; the Company failed to follow its own policy on a Harassment Free Environment; the Company violated Rule 42.2 in that the investigation of G.J. Rothon was neither timely, nor fair and impartial; the Company did not establish just cause for discipline in this case.

Therefore, with regard to the foregoing, it is the position of the Union that Train Movement Clerk G.J. Rothon should be returned to duty forthwith without loss of seniority, with full redress for all lost wages, benefits and losses incurred as a result of his dismissal, including but not limited to, interest on any moneys owing.

FOR THE UNION:
(SGD.) RICK JOHONSTON
PRESIDENT, COUNCIL 4000

There appeared on behalf of the Company:

J. Coleman	- Counsel, Montreal
P. Marquis	- Labour Relations Associate, Toronto
M. Horvat	- Counsel, Montreal
G. Doohkie	- TRS Manager, Toronto

J. Glower - Operations Supervisor (TRS)
E. MacKinnon - Transportation Supervisor, Oakville
R. Potter - Operations Supervisor (TRS)

And on behalf of the Union:

D. Olshewski - National Representative, Winnipeg
R. Fitzgerald - Bargaining Representative, Toronto
G.J. Rothon - Grievor

AWARD OF THE ARBITRATOR

This grievance concerns the discharge of Train Movement Clerk G.J. Rothon. The evidence establishes that Mr. Rothon brought to the workplace a six page written account of what he characterizes as his harassment at the hands of two supervisors, who shall be referred to as "G" and "B". That written statement, reviewed in greater detail below, contains insulting and degrading comments, most particularly in respect of G. Following the dissemination of the statement broadly within the workplace, the Company caused an investigation to take place, as a result of which Mr. Rothon was assessed forty demerits, and discharged for the accumulation of demerits in excess of sixty.

The record discloses that on August 13, 1997 the grievor was scheduled to appear for an employee statement in relation to an allegation of his having been involved in conduct unbecoming an employee of the Company, following upon an incident which occurred on July 26, 1997, and his alleged failure to protect his assignment on July 29, 1997. It is not disputed that on that same morning Mr. Rothon appeared at work with a six page single spaced typed statement recounting what he characterizes as his harassment at the hands of Supervisors G and B of the Company's Transportation Reporting Services (TRS) Office, located on Front Street in Toronto. For the purposes of this grievance the Arbitrator is prepared to accept the account of Mr. Rothon, which is that he brought the document to work and showed it to other employees. He states that he placed it in his drawer, and also placed a copy under the door of then-Supervisor Edgar MacKinnon. The document was in fact not addressed to anyone. By means that are not clear, it became relatively well circulated within the workplace, being placed at more than one work station, on at least one employee bulletin board and under the door of at least one other supervisor, TRS Manager Gobin Doohkie.

The statement, which the Arbitrator has reviewed in detail, is a litany of complaints by Mr. Rothon in respect of his alleged mistreatment at the hands of the Company, and in particular of Supervisors G and B. The tone of the document is, to say the least, openly contemptuous of both individuals, as reflected in its intemperate and abusive language. Excerpts from the statement are, in part, as follows:

- G is very intelligent but not smart.
- [Another employee] was a tool of B to help G get me.
- B wasted a $1,000.00 ... It was ... absolutely stupid.

- B is not forcing [other employees] to assume their new jobs, as they are not on his "hit" list as I was.

- [in reference to G] You do not have a clue what is going on around here ... The one supervisor who can't even work even work one desk on our floor ... I don't go near you due to your terrible body odour and bad breath, which makes me ill.

I already avoided G due to his horrific body odour and bad breath. This was not just me that noticed as I know other employees mentioned it to B and [another supervisor] ... It made me feel ill when he was near me, so I avoided him as much as possible.

G is avoided by most employees due to 3 main reasons. (1) Is due to most employees having no respect for his knowledge on the job. (2) If you take a problem to him, he will ask irrelevant questions, he will keep you on for the duration of the problem for someone to blame. (3) He has a terrible hygiene problem. He smells of body odour and has very bad breath. (4) It is accepted that he is on a power trip and don't give him any ammunition to use on a fellow employee or hassle a train crew.

G has no people skills or personality

I realize G has medical problems which may account for his odour. I have witnessed him leaning against the wall gasping for air and sweating profusely.

During the investigation the grievor took the position that the statement was prepared by him as a formal complaint under the Company's harassment policy. The Arbitrator rejects that explanation entirely. Firstly, there is no heading to the statement, and no addressee or supervisor to whom it is referred. The first paragraph the statement does relate, in part: I am charging G with harassment of Gary Rothon with the help of a co-conspirator, B." There is nevertheless no specific reference within the statement that refers to any substantive or procedural part of the Company's harassment policy. Regrettably, the Arbitrator is compelled to conclude that the document was intended as little more than a poison pen letter whose purpose was not to advance a formal harassment complaint- under the Company's policy, but to ridicule and denigrate openly two supervisors. While it is not necessary to so find, the Arbitrator can readily appreciate the Company's belief that the statement appeared in the workplace not as a formal complaint of harassment so much as an angry counter-attack on the part of the grievor on the day he was to undergo a disciplinary investigation in relation to the events of July 26 and 29, 1997.

The Arbitrator is satisfied that the grievor exceeded the bounds of common decency in the writing of the statement which became widely circulated in the workplace on August 13, 1997. 1 am also satisfied that he must take responsibility for its dissemination, to a certain extent. By his own admission he showed the statement to other employees. He did so in a manner calculated to undermine G and B in their personal dignity and authority. While Mr. Rothon denies having distributed the statement, it is manifestly clear that his custody of it was such as

to allow for its easy access and distribution by someone, up to the point of its being posted on a bulletin board. Even assuming, without finding, that Mr. Rothon believed that he was somehow properly pursuing a harassment complaint, he knew or reasonably should have known that such a complaint, like a union grievance, is not of itself a licence to publicly subject supervisors or other employees to abusive or derogatory language. There can be little doubt but that Mr. Rothon rendered himself liable for discipline for the openly malicious comments which he wrote and willingly showed to others on August 13, 1997.

In dealing with the appropriate measure of discipline, the Arbitrator is met with an unfortunate prior disciplinary record. Mr. Rothon has been in this Office before, being the subject of two prior awards. **IN CROA 2606,** issued in April of 1995, the Arbitrator substituted a lengthy suspension for the grievor's discharge for claiming sick benefits when he was in attendance at a real estate training course. **CROA 2607,** a companion award, concerned the assessment of thirty demerits against Mr. Rothon relating to an altercation between himself and another supervisor, G.D. Adams. Although the demerits were reduced, the Arbitrator found that the grievor did refuse to carry out the directives of Mr. Adams, although a degree of provocation on the part of the supervisor was found. Noting that Mr. Rothon "... can be a difficult person to deal with" the Arbitrator noted with some regret that his relations with Mr. Adams had deteriorated to the point of both men facing each other in criminal court on charges and counter-charges of assault. The award concluded with the following words: "... I would also suggest that Mr. Rothon reconsider the wisdom of continuing to place himself in potentially confrontational situations alluding to the union office he then held.

Regrettably, that suggestion has not been heeded. As the facts of the instant case disclose, for reasons he best appreciates, the grievor brought into the workplace a lengthy statement containing insulting language aimed repeatedly at two supervisors. The document was addressed to no-one, had no covering letter, and cannot fairly be characterized as the filing of a formal complaint of harassment. Its language surpasses all acceptable standards of civil communication and does, I am satisfied, strike at the root of the employment relationship given the degree of personal harm obviously intended, and arguably achieved. Apart from the aggravating factor of the grievor's prior record, is the equally unfortunate fact that at no time, either during the Company's investigation or up to and including the arbitration hearing, has Mr. Rothon made any attempt to excuse his conduct or apologize to the supervisors targeted by his statement. In the circumstances the Arbitrator can see no basis for a reduction of penalty.

The grievance is therefore dismissed.

December 15, 2000

MICHEL G. PICHER
ARBITRATOR