

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3362**

Heard in Montreal, Tuesday, 9 September 2003

concerning

VIA RAIL CANADA INC.

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL
WORKERS UNION OF CANADA (CAW-CANADA)
EX PARTE**

DISPUTE:

Concerning the assessment of 25 demerits to Ms. Rosalie Werhun for allegedly "refusing to comply with a directive from a Company Officer".

UNION'S STATEMENT OF ISSUE:

On November 6, 2000, Ms. Leslie Cowan, Manager, asked the grievor to attend a meeting with Mr. Tony Blanchard, Union Local Chairperson. The meeting was in relation to Ms. Werhun's position as the Union's Health and Safety Representative, and an incident which occurred several days earlier wherein she was accused of performing Union work on Company time. The Union alleges that the meeting was more intended as a provocation and harassment, and was in violation of section 94 of the Canada Labour Code; articles 2.1 and 27.12 of the collective agreement.

In the alternative, it is the Union's position that the discipline was exceedingly harsh, in the circumstances; and the Manager's actions in the case must be considered. Accordingly, we are asking that the demerits assessed be expunged from the grievor's record.

FOR THE UNION:

(SGD.) D. OLSHEWSKI

NATIONAL REPRESENTATIVE

There appeared on behalf of the Corporation:

L. Laplante - Senior Officer, Labour Relations, Montreal
E. J. Houlihan - Sr. Manager, Labour Relations, Montreal
M. Boulanger - Director, Telephone Sales Office, Toronto
L. Cowan - Manager, Telephone Sales Office, Toronto
M. Hudon - Legal Counsel

And on behalf of the Union:

D. Olszewski - National Representative, Winnipeg
T. Blanchard - Regional Bargaining Representative, Toronto
Q. Lam - Witness
R. Werhun - Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond controversy, that Ms. Werhun did engage in insubordination. Following a verbal confrontation between herself and her immediate supervisor, Ms. Werhun was instructed to attend a meeting with Ms. Leslie Cowan, Manager of the Toronto Telephone Sales Office. The purpose of the meeting was to investigate the verbal confrontation between Ms. Werhun and her immediate supervisor, Ms. Helen Jean, which occurred on November 1, 2000.

The record discloses that the grievor refused to attend. She took the position that her Union representative, Mr. Tony Blanchard, could adequately represent her for the purposes of the meeting, and that to attend might be perilous to her health. There is no medical evidence to support the latter suggestion.

It may well be that the prospect of meeting with Ms. Cowan was stressful for Ms. Werhun. The record before this Office discloses that the grievor was the weakest in productivity of all forty-seven employees in her classification, and had been given coaching and counselling to improve her performance on a number of occasions (see **CROA 3361**). However, a strained relationship with a direct supervisor and the stress of being viewed as an under-performing employee do not excuse an individual from obeying a proper directive from management to attend a meeting to investigate her conduct in relation to a specific incident.

The position of the Corporation is that the grievor simply chose to be defiant of the Corporation, for reasons which she best appreciates. The Arbitrator is inclined to accept that characterization of Ms. Werhun's conduct, particularly in the face of her own statements and behaviour during the course of the investigation conducted by the Corporation, and the conduct of her Union representative, Mr. Tony Blanchard, during that investigation. As this Office has repeatedly emphasized, the disciplinary investigation under a collective agreement is intended to be an expedited, informal exercise in fact finding both to assist the employer in determining whether misconduct

did occur, and to afford the employee a reasonable opportunity to respond to any outstanding accusation. To the extent that this Office relies on the record of the disciplinary investigations, the integrity of that process must be respected.

The issue being examined during the investigation was whether the grievor was insubordinate in failing to respond to a directive to attend at a meeting with her supervisor. Unfortunately, during the course of the investigation Mr. Blanchard elicited evidence and comments from the grievor, and from himself, going to virtually all aspects of the operation of the Telephone Sales Office. Allegations are made of union busting, harassment and abuse of authority and power. Mr. Blanchard makes a number of statements bordering on actionable defamation. Among them: "Ms. Jean is nothing more than a mini-tyrant in a high tech sweat shop; ...". In reference to Ms. Cowan, Mr. Blanchard states that she "... has deliberately falsified a document leading to a person's investigation." Shortly afterwards Mr. Blanchard refers to a part of a statement recorded by Ms. Cowan in the following terms: "... that entire sentence is cow manure."

This Office well appreciates that Union representatives are to be given some scope in their choice of words in representing employees. There is a point, however, beyond which inflammatory statements do little to advance the fact finding process and clearly do not advance the interests of the employee whose very employment may be at stake. As this Office said in **CROA 3157**:

... As prior awards of this Office have confirmed, the disciplinary investigation process is an intrinsic part of the expedited system of arbitration utilized within the railway industry in Canada. Its integrity must be respected if the arbitration system of this Office is to itself be reasonably efficient and able to rely on information gathered within that process. An examination of the record causes the Arbitrator to conclude that the grievor and his representative were openly contemptuous of the investigation process. They were unresponsive to a degree which gave the investigating officer a reasonable basis to conclude that any further attempt at questioning the grievor would only meet still more frustration.

Regardless of the ill-advised statements of her representative, the grievor remains entitled to an assessment of the discipline against her on its merits. Ms. Werhun is an employee of some twenty-nine years' service who had a clear disciplinary record at the time of the incident in question. In mitigation, she does

not have a history of insubordination. She was clearly wrong in refusing to attend the meeting with Ms. Cowan, and was therefore deserving of some measure of discipline. In aggravation, there is no recognition of any error on her part in the statement she gave at the investigation. Nor was any made by her at the arbitration hearing. In all of the circumstances, particularly given that this appears to be a first offence of this type, the Arbitrator is satisfied that the assessment of fifteen demerits would have been appropriate to convey to the grievor the need to respond to a clear directive to attend at a meeting with her supervisor.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor's record be amended to reflect fifteen demerits for insubordination by refusing to attend the meeting with Ms. Cowan, as directed, on November 6, 2000.

September 19, 2003

(signed) MICHEL G. PICHER
ARBITRATOR