CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3400

Heard in Montreal, Wednesday, 14 January 2004

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Dismissal of Traffic Coordinator S. Brunn for failure to perform the duties of Traffic Coordinator.

UNION'S STATEMENT OF ISSUE:

On May 22, 2003, S. Brunn was working as Traffic Coordinator in Prince George Yard. During the course of this tour of duty, Mr. Brunn unintentionally removed two cars from the journal of Train 358. While the cars were on the train, they were not listed on the train journal.

Following an investigation, Mr. Brunn was dismissed.

It is the Union's position that, while Mr. Brunn admittedly made an error, discharge is certainly unwarranted and, in any event, excessive. Accordingly, the Union requests that the discipline assessed to Mr. Brunn be substantially mitigated, and that he be reinstated without loss of seniority and be made whole for his losses.

The Company disagrees.

FOR THE UNION:

(SGD.) R. A. HACKL
FOR: GENERAL CHAIRPERSON

There appeared on behalf of the Company:

S. Zeimer	– Human Resources Manager, Vancouver
R. Reny	– Sr. Manager, Human Resources, Edmonton
E. Blokzyl	– Superintendent, B.C. South

And on behalf of the Union:

M. A. Church	– Counsel, Toronto
R. A. Hackl	– Vice-General Chairperson, Edmonton
B. R. Boechler	– General Chairperson, Edmonton
A. Whitfield	– Local Chairperson, Vancouver
S. Brunn	– Grievor

AWARD OF THE ARBITRATOR

This grievance involves the discharge of an employee of fourteen years of service, with no serious previous discipline, for a computer error. The Union submits that the termination of the grievor was grossly excessive and seeks his reinstatement with full compensation for wages and benefits lost.

The facts are not in substantial dispute. The grievor, Mr. Steve Brunn, worked for some fourteen years as a running trades employee, eventually becoming qualified as a Traffic Coordinator. While working from the spare list as a traffic coordinator in Prince George Yard on May 22, 2003, Mr. Brunn inadvertently removed two cars from the journal of train 358. In the result, the cars did proceed on the train as planned, but the conductor's journal did not have the necessary notations respecting them.

The evidence discloses that while the grievor was making up the journal for train 358 on his computer, the screen produced a pop-up indicating two cars. He took the message on the screen to be telling him that the cars were suspected dimensional loads. In accordance in what he says he was trained to do, he struck the PF12 key,

which apparently removed the pop-screen and allowed him to continue with the “make train” process. During the investigation the grievor explained that the screen resembled the marshalling screen which he had been taught to exit by way of striking PF12. He explained that he followed what he thought the screen was saying by hitting the PF12 key, believing that if there was a fundamental problem the computer would not allow him to continue making a journal. When he found himself able to carry on with the make train process he concluded that everything must be correct.

The evidence confirms that the grievor had relatively little experience or training in the traffic coordinator function on the tour of duty generally responsible for the make up of train 358, as he had been more specifically trained by a yardmaster on the 06:30 shift which does the make up for train 561, a train on which all the cars are pre-tagged by car management. In other words, the problem which he encountered on May 22, 2003 was one which had never arisen in his experience and for which he had not been trained. Indeed, the unchallenged representation of the Union is that local management at Prince George did not know how to deal with the pop-up in question, and that ultimately a former train management clerk, working as a janitor at that location, provided the grievor with the proper explanation and instructions with respect to the pop-up in question.

The position of the Company is that in the circumstances, being confronted with a new pop-up on his computer screen the grievor should have sought instruction from his supervisor or contacted the P.O.D. for further instruction.

The Arbitrator must agree with the Company that the grievor committed an error in judgement. The issue is whether that error in judgement, coupled with his prior service, merited his summary dismissal. In considering that issue a number of mitigating factors must be carefully examined. Firstly, it is not disputed before the Arbitrator that the grievor never received any specific training from the Company with respect to the handling of the computer pop-up which he encountered on May 22, 2003. It was only after the incident that local supervisors indicated that faced with a red coloured pop-up he should inquire with his supervisors or call the P.O.D. Secondly, while the questions put to the grievor by the investigating officer, Transportation Supervisor Peter Sampson, appear to fault the grievor for not having scheduled himself for additional training on tours of duty other than the 06:30 shift, there is no evidence before the Arbitrator as to how the Company ensures the systematic and thorough training of yard coordinators, or why it did not ensure the training of the grievor in respect of the circumstance which he encountered on the day in question. The questions of Mr. Sampson, which the Arbitrator has difficulty understanding, are tantamount to suggesting that the grievor is to be faulted because he did not schedule himself for the appropriate training. It should be viewed as axiomatic that only the employer can know and evaluate the scope of training necessary for an individual, and that choice cannot be left to the employee. At a minimum, therefore, the evidence discloses a degree of laxity on the part of management.

Significantly, prior to the incident in question the grievor had a close to exemplary disciplinary record. In fourteen years of service he had received only one written reprimand, apparently for an earlier failure to properly journal another car, an incident which was investigated on January 7, 2003. While Mr. Sampson's questioning of the grievor would appear to suggest that both incidents involved a reckless application of the PF12 key, there is no evidence to sustain that assertion. It is not established on the material before the Arbitrator that the grievor simply repeated the same error for which he had been reprimanded as a result of the investigation of January 7, 2003.

On what responsible basis can the Arbitrator sustain the summary discharge of the grievor? Even accepting that there is some similarity between the error which provoked the written reprimand and the incident of May 22, 2003, and without taking into account the evidence in respect to the inadequacy of the grievor's training by local management, the jump from a written reprimand to discharge is difficult, if not impossible, to reconcile with well accepted principles of progressive discipline. That is particularly so in the treatment of an employee who, prior to these two incidents, was discipline free through his entire career of service with the Company.

What the incident at hand discloses is not deliberate recklessness or disregard of the grievor's previous training. What is disclosed is an inadvertent error which had no negative impact on the actual composition of the train consist, involved no risk to safety and occasioned no loss of productivity. Of perhaps equal significance, but for the failure

of the Company in respect of properly training the grievor, the incident might have been entirely avoided.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority, with compensation in full for all wages and benefits lost, and with the substitution of an assessment of ten demerits for his failure to make proper inquiries in the face of a computer message about which he was uncertain.

February 19, 2004

(signed) MICHEL G. PICHER
ARBITRATOR