CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 3688

Heard in Montreal Tuesday, 9 September 2008

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Appeal of the assessment of 15 demerits to Locomotive Engineer Rick Longworth.

JOINT STATEMENT OF ISSUE:

On October 4, 2007, Engineer Longworth was assessed 15 demerits for "failing to appear for a properly scheduled investigation on Monday September 17, 2007, while employed as a Locomotive Engineer, Coquitlam B.C."

It is the Union's position that the investigation in this matter was not conducted in a fair and impartial manner per the requirements of the Collective Agreement. For this reason, the Union contends that the discipline is null and void and Engineer Longworth should be made whole.

The Union further contends that there is no cause for discipline in the circumstances, or in the alternative, that the penalty is excessive.

The Company disagrees and denies the Union's request.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) D. ABLE	**(SGD.) M. THOMPSON**
GENERAL CHAIRMAN	**LABOUR RELATIONS OFFICER**

There appeared on behalf of the Company:

M. Thompson	– Labour Relations Officer, Calgary
R. Hampel	– Counsel, Calgary
J. M. Dorais	– Labour Relations Officer, Calgary
R. Zegliaski	– Manager, Operations
F. Herbold	– Yard Manager
C. Lee	– Service Area Coordinator

And on behalf of the Union:

M. Church	– Counsel, Toronto
D. Able	– General Chairman, Calgary
G. Edwards	– Vice-General Chairman,
D. Delacherois	– Local Chairman,
G. Ranson	– Legislative Representative
R. Longworth	– Grievor

AWARD OF THE ARBITRATOR

The grievor was assessed fifteen demerits for failing to appear at a disciplinary investigation scheduled for September 17, 2007 at Coquitlam, B.C. In reviewing the facts of this case the Arbitrator is compelled to comment that the annals of this Office may well contain no parallel as regards the intransigence of an employee in respect of the notice required for his or her disciplinary investigation.

On August 21 the grievor was involved in a verbal altercation with a Company supervisor, conduct which the Arbitrator has found to constitute insubordination, an offence for which he had been repeatedly disciplined in the past (**CROA&DR 3687**). On August 22 a telephone call was placed to his residence. As there was no answer a message was left advising him that he was removed from service pending a formal investigation, which was to be held on August 24th. He returned the call the same day and advised that he wished to received notification in writing. The Company was cooperative and advised that his written notification would be left for him in the General Yard Office. That appears not to have satisfied Mr. Longworth, who insisted that the notification be delivered to his residence forty-eight hours in advance and that the investigation therefore be rescheduled for August 27 or 28. The same day a further call attempted to Mr. Longworth's residence. It again went unanswered and a voice mail

advised him that a package would be delivered to his residence and that the investigation had been rescheduled for the 28th of August. Yet another call was placed the same day urging Mr. Longworth to return the call to confirm receipt of the above messages. He did not do so.

On August 24th two Company officers attempted to deliver the written notification of investigation to Mr. Longworth's residence. Being unable to locate his address they attempted to call him, but their call also went unanswered. A voice mail advising him of the problem also went unanswered. On August 28, the day of the rescheduled investigation Mr. Longworth did contact Supervisor Zeglinski and advised that he had not received notification in respect of the investigation scheduled for that day. When Mr. Longworth advised that he would not be attending the investigation he was advised that the Company was prepared to deliver the notification to his residence if he could assist by giving directions. His answer? He did not want any CP people on his property. The same day he appeared at Mr. Zeglinski's office where he was handed the written notice of his investigation which, given his refusal to do it the next day, was rescheduled for Friday, August 31st.

A supplemental investigation, following other procedures not pertinent to this analysis, was scheduled for September 17. A telephone call was placed on September 14th to his residence. Again it went unanswered and the voice mail left with him was not responded to. The message advised him that a document package would be couriered to his residence and that a copy would be left for him in the yard office. In the result, he did not attend at the investigation of the 17th of September and gave no notice to the Company of the fact that neither he nor an accredited Union representative would

attend. An investigation into his failure to appear at the hearing of September 17 was conducted on September 21.

As was commented upon in **CROA&DR 3687**, while this Office is vigilant to ensure that the procedural requirements of disciplinary investigations are respected, so that employees do have substantial notice as contemplated, there are circumstances where employee conduct can verge upon abuse of procedure. That is what the Arbitrator finds as occurred in the case at hand. It is difficult to understand Mr. Longworth's mindset, unless it is to attempt to introduce enough procedural steps onto the chess board to hope to eventually trip up the Company. The events of August 22 are instructive in this regard. When he advised that he insisted on having notification in writing the Company then indicated that his papers would be left for him at the General Yard Office. On its face, in the Arbitrator's view, that would be adequate compliance with the requirement to provide notification in writing on forty-eight hours notice. That, however, was not good enough for the grievor who insisted that the documents be delivered to his residence. When, however, it subsequently became impossible to determine his address, and he was finally in contact with Supervisor Zeglinski who asked for his address so that Company officers could deliver his papers as requested, his response was that he did not want any Company people on his property.

There is a painful sense of *déjà vu* about these facts. In **CROA 3112**, reinstating Mr. Longworth on a previous occasion, this Arbitrator made the following comment:

> … That is particularly so to the extent that the grievor's prior record discloses a degree of recidivism in matters of inappropriate conduct towards Company officers. The registering of a suspension of some five months, being the time from the grievor's discharge to the hearing of this matter, should in my view cause Mr. Longworth to think more positively on the need to avoid "game

> playing" and to be co-operative in all matters relating to his employment, including disciplinary investigations.

It is clear to the Arbitrator, particularly in light of some of the answers given by Mr. Longworth during the course of his disciplinary investigation that the words of this Office fell on deaf ears.

In the result, I am satisfied that in the case at hand the grievor cannot, given his own unreasonable behaviour, invoke the argument that he did not receive adequate notice for the investigation scheduled for September 17. If he did not receive that notice it is because he did everything in his power to evade it. It is not unreasonable to expect an employee, subject to discipline and at risk of discharge, to be vigilant and cooperative with respect to procedures of both the Company and the Union dealing with the proper investigation of his case. It is not open to an employee to pursue an evasive course of in bad faith by failing repeatedly to return calls, and to thereafter raise technical objections with respect to the sufficiency of notice.

The Arbitrator is also satisfied that there was no irregularity in the fact that the investigation was conducted by the Company officer who was charged with giving notice of the investigation to Mr. Longworth. That might be problematic if there were any factual issues to be resolved, in the face of conflicting evidence. There were none, however. The facts in relation to the efforts at reaching Mr. Longworth, and his recurring failure to respond to telephone calls and messages is not effectively disputed. In the result, the investigating officer was not placed in a position of being a witness in any meaningful sense.

In the result, the Arbitrator is satisfied that there was no procedural unfairness towards Mr. Longworth, and that if he did not receive timely written notice of the investigation of September 17, 2007, he was the author of his own misfortune. I am also satisfied that the assessment of fifteen demerits was appropriate in the circumstances. The grievance is therefore dismissed.

September 15, 2008

signed MICHEL G. PICHER
ARBITRATOR