CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3777

Heard in Edmonton, Wednesday, 10 June 2009

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the Company's decision to terminate the employment of Conductor Matt Watson.

JOINT STATEMENT OF ISSUE:

On February 1, 2008, Conductor Watson's employment was terminated by the Company for alleged "conduct unbecoming an employee as evidenced by your comments made to co-workers, threatening to inflict harm upon a fellow employee: a violation of Policy 1803 (Violence in the Workplace).

The Union contends that the investigation 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 ought to be removed in its entirety and Conductor Watson be made whole.

The Union further contends that there are no grounds for discipline in the circumstances and that the penalty of discharge is unjustified and unwarranted. In the alternative, it is the Union's position that the penalty of discharge is excessive and contrary to the progressive discipline provisions under the collective agreement.

The Union requests that Conductor Watson be reinstated without loss of seniority and benefits, and that he be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees and denies the Union's request.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) D. OLSON	**(SGD.) A. AZIA GARCIA**
GENERAL CHAIRMAN	**FOR: ASSISTANT VICE-PRESIDENT, OPERATIONS**

There appeared on behalf of the Company:

D. Corrigan	– Labour Relations Officer, Calgary
B. Deacon	– Labour Relations Officer, Calgary
D. Hoppenreys	– Service Area Manager, Moose Jaw
C. Ruff	– Manager, Operations, Medicine Hat
R. Hampel	– Counsel, Calgary

And on behalf of the Union:

K. Stuebing	– Counsel, Toronto
D. Olson	– General Chairman, Calgary
D. Fulton	– Vice-General Chairman, Calgary
B. Hayden	– Local Chairman,
M. Watson	– Grievor

AWARD OF THE ARBITRATOR

The allegation against the grievor is that he made several threats of violence against his co-workers and managers. One of the targets of the threats, as acknowledged by several employees in statements obtained by the Company prior to the grievor's investigation, was Road Manager Grant Gresty. The Union notes by way of background that a confrontation occurred between the grievor and Mr. Gresty during a tour of duty on June 12, 2006 concerning the grievor's use of his cell phone instead of his watch to determine times. According to the Union, the grievor filed a harassment complaint and Mr. Gresty was later required to apologize for his behaviour to the grievor.

The grievor was removed from service on September 17, 2007. The grievor and his Union representative Brent Hayden were told that his removal from service was in response to unspecified concerns of unnamed coworkers.

Mr. Gresty noted in his statement of September 20, 2007, which was obtained by the Company in preparation for the grievor's investigation, that he had a conversation with a fellow employee, Thom Cholowski, on September 17, 2007 who told Mr. Gresty that the grievor had indicated that he "had a problem" with Mr. Gresty. According to Mr.

Gresty, the grievor described to Mr. Cholowski during their same discussion how he would kill someone with the use of a baseball bat.

Mr. Cholowski, in his investigative statement, confirmed his discussion with the grievor about Mr. Gresty, including the comments about the baseball bat. In addition, Mr. Cholowski, a close friend of the grievor's at the time, confirmed that he heard other disturbing comments from the grievor about other co-workers and how the grievor would injure them and even resort to torture. Mr. Cholowski was asked during his statement whether he was concerned for the safety of others as a result of coming forward with this information about the grievor. Mr. Cholowski replied that he was at the time he disclosed the information but was no longer concerned about the potential for harm being inflicted by the grievor. He noted in that regard that his fears were assuaged as result of his understanding that the grievor was cleared by the Company psychologist.

It is important to note that the grievor and his Union representative met with the Company on September 18, 2007, the day after he was taken out of service and volunteered to go take a medical evaluation by the OHS department. The results of that evaluation were received on November 17, 2007 and indicated that the grievor was fit to return to work.

Other employees also provided supporting statements which confirmed the grievor's comments to them about a "hit list". One employee who was interviewed

however, Russ Lamothe, noted that the grievor never talked to him about violence against Mr. Gresty or any other co-workers.

I find on the basis of the numerous statements obtained by the Company, some eight in all, that the grievor made threats against his fellow employees, including having a “hit list”. Those are for the most part reliable first-hand accounts of actual discussions between the grievor and his co-workers and demonstrate a consistent pattern of an intention to inflict harm. Even discounting the second-hand account of Mr. Gresty, there is sufficient evidence before me to draw the conclusion that the grievor did make comments to several co-workers that carried the innuendo of death threats, particularly his comments to a number of them about having a “hit list”. Those are very chilling utterances and lean towards a severe disciplinary response. In that regard, I note the comments of Arbitrator Picher in **CROA 3451** where he states:

> Threatening the murder of fellow employees is an extremely serious matter. While at one time such comments might have been given a certain latitude, highly publicized real life tragedies which have occurred in a number of workplaces, both in Canada and elsewhere in recent years, have understandably changed that. The obligation to protect employees and supervisors against threats and fear for their own safety and the safety of their families is now recognized as one of the highest obligations of an employer (see, generally, **Re Metropolitan Hotel and Hotel Employees Restaurant Employees Union, Local 75** (2003), 1242 L.A.C. (4th) 1 (Springate)). This Office has had prior occasion to sustain the assessment of serious levels of discipline for threats of physical violence (see **CROA 1701** and **1775**). In **CROA 1701** the Arbitrator commented, in part: “Plainly the threatening of a fellow employee in a way that threatens the peace of mind and well-being of that person in his job, and the physical acting out of such threats, is prejudicial to an employer’s interest and will justify the imposition of serious disciplinary measures.” In the aftermath of certain highly publicized cases in recent years, employers, unions and arbitrators must view such threats with the greatest seriousness.

In terms of mitigating factors, the grievor did volunteer for a medical assessment when he was taken out of service and the subsequent report states that he did not suffer from any psychiatric conditions which would impede his return to work. On the other hand, the grievor can only be considered as a short service employee having been with the Company for only two years at the time of his dismissal. More importantly, however, is the very compelling circumstances of the undisguised physical and even mortal threats against fellow employees. The grievor simply can no longer be trusted at this particular workplace having made such calculating and disturbing comments about his fellow employees.

I would add that I disagree with the Union concerning the fairness of the investigation. The Company took it upon itself to initially marshal evidence through individual statements of coworkers for the single purpose of determining the validity and legitimacy of Mr. Gresty's initial complaint against the grievor. As such, it was not inappropriate for those interviews to be initially conducted without the presence of the grievor. When it was determined that Mr. Gresty's allegations concerning the grievor appeared to be well-founded, a second round of investigations concerning the grievor's alleged misconduct ensued during which time the same employees, with the exception of Mr. Lamothe, attended investigative interviews where the grievor and his union representative were present. Similarly, I agree with the Company that the absence of Mr. Lamothe's at the second round does not undermine the investigation entirely. His initial statement did not exculpate or directly contradict the other eight statements. Mr. Lamothe generally asserted that he had no recollection of any discussions with the

grievor. The failure of the Company to call witnesses at the investigation is not a violation of the standard for a fair and impartial hearing. See: **CROA 2920, 2934, 3270** and **3461.**

For all the above reasons, the grievance is dismissed.

June 25, 2009

(signed) JOHN M. MOREAU, Q.C.
ARBITRATOR