

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 4708

Heard in Calgary, November 12, 2019

Concerning

CANADIAN PACIFIC RAILWAY

And

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION**

DISPUTE:

Dismissal of Mr. J. Phillips

JOINT STATEMENT OF ISSUE:

On April 8, 2019, the grievor, Mr. Jeremy Phillips, was formally advised that he was dismissed from Company service “for conduct unbecoming as evidenced by your behaviour at the Cranbrook Days Inn and Conference Center where you had to be removed by the Cranbrook RCMP on March 2, 2019”. The Union objected to the dismissal and a grievance was filed.

Union’s Position:

The investigation was neither fair nor impartial and in violation of section 15.1 and 15.2 of the collective agreement. In addition, mitigating factors were not taken into account (for example, the grievor’s discipline free history and the fact that he continued to work until April 8, proving that the Company viewed him not as a problem but as a still valued employee). By dismissing the grievor, the Company violated its own Hybrid Discipline Policy.

The Company is not able to meet its burden of proving that the grievor’s behaviour was so egregious that it permanently severed the required bond of trust. In addition, the Company violated sections 15.7, 17.10 and 17.11 of the Collective Agreement.

The dismissal was unfair and excessive.

The Union requests that the grievor be reinstated forthwith without loss of seniority and with full compensation for all losses as a result of this matter.

Company’s Position:

The Company maintains that the investigation was both fair and impartial. No violation of the Company’s Hybrid Discipline Policy occurred. Further, the Union has not clearly indicated as to how the Company has violated Article 15 of the Collective Agreement.

All mitigating factors were taken into consideration by the Company. Regardless of the grievor not having any previous instances of discipline, the Company maintains that the grievors culpability for the incidents of January and March 2019 was warranting of Dismissal.

The Union claims that the grievor worked until April 8, 2019, however this directly contradicts what is written in the Step 2 grievance submitted by the Union where it was indicated that the Grievor was removed from service on March 7, 2019 pending an investigation.

The Company maintains that the evidence provided in the statement of the grievor clearly established the grievors culpability in the instant case.

The Company maintains that no violation of the Collective Agreement occurred including Article 17 which had no applicability in the instant case.

The discipline assessed was reasonable in all the circumstances given the seriousness of the incidents.

FOR THE UNION:
(SGD.) G. Doherty
President

FOR THE COMPANY:
(SGD.) W. McMillan
Labour Relations Manager

There appeared on behalf of the Company:

W. McMillan	– Manager, Labour Relations, Calgary
L. McGinley	– Assistant Director, Labour Relations, Calgary
A. Jansen	– Manager, Labour Relations, Calgary

And on behalf of the Union:

H. Helfenbein	– Vice President, Medicine Hat
D. Brown	– Counsel, Ottawa
G. Doherty	– President, Ottawa
W. Phillips	– Director, Eastern Region, Frankford
T. Marshall	– Director, Pacific Region, Maple Ridge

AWARD OF THE ARBITRATOR

The grievor entered into the service of the company in July 2014 as a labourer. He worked his way up over the next five years to the position of a Group 1 machine operator.

On March 2, 2019 the grievor was removed from his company supplied accommodation at the Cranbrook Days Inn. The grievor continued to be employed by the Company until April 8, 2019 when he was terminated for “...unbecoming conduct as evidenced by your behavior at the Cranbrook Days Inn and Conference Center where you had to be removed by the Cranbrook RCMP on March 2, 2019.”

The grievor had been working on a BC Steel Gang since January 20, 2019. He was on rest days on March 2, 2019. According to correspondence received from the General Manager of the Cranbrook Days Inn and Conference Centre, the grievor and two friends were arrested following multiple noise complaints. Details of the incident are set out in an email dated March 5, 2019 from the General Manager of the hotel.

Incident:

Jeremy was escorted out of the hotel in Handcuffs by the police.

When I started my shift that night my co-worker had already been called up to Jeremy's room twice for noise complaints to which he would not answer his door, then around 2 AM I had gotten another call about the noise level in his room. I went up to try to get him to quiet down. He would not answer the door in the noise level persisted so I phoned the cops who came shortly after, and knocked on his door, with no answer they entered the room. I don't know what words were exchanged but a few minutes later the police came out with an intoxicated Jeremy and two others in handcuffs.

A further email from the general manager dated March 6, 2019 documented the following:

To add to this on Saturday, March 2, there are multiple noise complaints prompting the night auditor on duty to call the police at around 2 am. Jeremy and 2 other friends he had been staying with him were arrested and we had to comp room charges for the 2 rooms surrounding his room that had family staying for a gymnastics competition in town.

When we went into the room we found a butcher knife under one of the pillows on the bed, he had thrown up in the bed and there was blood as well (Pictures to follow).

We will need to have the carpets cleaned and replace linens for that room.

Lots of empty bottles of alcohol and general party room leftovers.

We took his personal belongings down to the desk and disabled his room key so he would have to go to the front desk to pick up his things. My front desk agents were very uncomfortable having to deal with him and it was not a good situation for the hotel, my staff or other guests.

I will have pictures for you as soon as possible and just let me know if there are any questions.

Included in the evidence is a lengthy email from the hotel manager dated March 4, 2019 which describes an incident on the night of January 20, 2019 when the grievor allegedly showed up at the hotel intoxicated and smelling of alcohol. The general manager alleges that the grievor was blaring his music and generally causing a disturbance in the early hours of that morning.

The Union has maintained from the time of the investigation that the Notice to Appear violated the grievor's right to a fair and impartial investigation under article 15.1 of the collective agreement. The Union claims the Notice to Appear was vague and inadequate for the purposes of satisfying the requirements of fairness and impartiality because it indicated that the grievor was being investigated for incidents "ranging between the dates of January 20, 2019 and March 2, 2019". The Union made it clear at the outset of the investigation that it objected to any documents referencing an incident on January 20, 2019. The basis for the objection was that the grievor was on duty that day from 18:00-05:30.

A reading of the investigation indicates that the main focus of the questioning was on the incident of March 2, 2019, and not on January 20, 2019. The grievor himself clearly indicated without being prompted (A 26) that "...January 20th I was at work". No other line of questioning about January 20, 2019 was pursued by the Company investigator after the grievor gave that answer. Given that the entire focus of the investigation was on the March 2, 2019 incident, and that the Form 104 only addresses culpability for unbecoming

behaviour on March 2, 2019, I find there is no grounds to support a breach of article 15.1 of the collective agreement.

Turning to the material incident of March 2, 2019, I note that the grievor did not dispute that he behaved inappropriately at that time. In that regard he stated in his investigation:

Q14: Refer to the 2019 System Motel & Camp rules section1, 1.2. All employees will conduct themselves in an orderly and safe manner in and about boarding cars, motels and on or about company property whether on or off duty.

Can you explain the reasons for your violation of this rule?

A14: I made a bad choice.

On the other hand, the grievor did dispute being in possession of butcher knife:

Q 18: Can you explain the reasoning for the butcher knife under your pillow?

A 18: I cannot, I do not own a butcher's knife. I did not bring any kitchen utensils/knives to the hotel [and] the hotel did not provide any knives or kitchenette.

As to the presence of a butcher knife, the grievor occupied a room without kitchenette facilities. He adamantly denied that he brought any knives or other utensils into the room. In addition, there is no corroborating evidence-including any pictures- other than what is set out in the email of the hotel manager to support a finding that the grievor himself hid a butcher knife under a pillow located on a bed within the room. I find, on the balance of probabilities, insufficient evidence to support this allegation.

I agree with the Company that the grievor's actions were nevertheless completely inappropriate. By his own admission, the grievor made a "bad choice". He displayed a lack of consideration and reckless disregard for not only the hotel management but also guests of the hotel. His drunken behavior in the middle of the night was so loud as to require the hotel management to compensate the occupants of the adjacent rooms for the cost of their room rentals. I also find that the grievor trashed the room with his two friends, leaving the hotel in a position of having to replace the linen and clean the rugs. There is clearly ample evidence before me to find that the grievor is deserving of discipline.

On the issue of penalty, there is no question that the grievor deserves significant discipline for his errant behaviour on the night of March 2, 2019. He managed not only to damage the hotel premises being paid for by the Company but also to disturb adjacent families in the middle of the night. The grievor exceeded the boundaries of acceptable behaviour by drinking and carousing with his two friends to the point where the RCMP had to be called and have him taken away in handcuffs from the hotel. There is no evidence that he explicitly apologized to the hotel management for his misconduct.

The grievor is not an employee with lengthy service. I consider nevertheless in mitigation that he has demonstrated his competence and value to the Company by working his way up the ranks from a labourer to a machine operator. In addition, there is no indication of a disciplinary record.

It is my view that the grievor deserves a lengthy suspension for his unbecoming conduct on the night of March 2, 2019. Accordingly, the grievor shall be reinstated to his employment immediately without loss of seniority and but without any compensation for lost wages and benefits.

December 4, 2019



**JOHN MOREAU
ARBITRATOR**