

SHP 727

IN THE MATTER OF AN ARBITRATION

BETWEEN: VIA RAIL CANADA INC.

AND UNIFOR, LOCAL 100

AND IN THE MATTER OF THE GRIEVANCES OF K. PATTERSON

ARBITRATOR: J.F.W. Weatherill

Hearings in these matters were held at Montreal on October 27, 2016.

B. Stevens, for the union.

M. Martens, for the employer.

AWARD

The first grievance before me relates to the imposition of 15 demerits on December 30, 2015 for conduct unbecoming (relating to the grievor's conduct during her tour of duty on October 30-31, 2015). The second grievance relates to the imposition of 60 demerits, and consequent discharge from employment for irregular timekeeping and time theft for the period October 2 – November 29, 2015. Both charges were the subject of investigation in accordance with the collective agreement, the first on December 11, 2015 and the second on December 15, 2015.

The grievor, a General Worker, has over twenty-six years of seniority.

The first grievance relates, as noted, to “conduct unbecoming”. There is no doubt there was, during the grievor's shift on the night referred to, an interaction between the grievor and a fellow employee, a Railway Car Technician usually working at another station. The grievor was concerned that the other employee may have been performing work within her job description in excess of the “forty-five-minute rule” (the Incidental Work rule). Whether or not there had been any violation of a collective agreement provision in this regard is not a question before me in this case, although the investigation of the Lead Hand in relation to this matter dealt to some degree – inconclusively, in my view – with the question of the instructions given the other employee. There were, however, no witnesses to the interaction between the grievor and the other employee which is the subject of this grievance.

It is alleged that the grievor told the other employee he was stealing her work, and that when the other employee replied that he was doing what he had been assigned to do, the grievor responded with obscene and abusive comments. The other employee said there was no need for that kind of talk, and the grievor responded by saying “you better watch your back around here” and made what was clearly a threat of physical violence from “five guys”.

The grievor denied having used obscene or abusive language or making threats. The statement of the other employee is clear, and there is no indication of any sort of improper motive which would lead him to invent such charges. The statement of the grievor, on the other hand, is evasive and contradictory. It is my conclusion, from the material before me and on the balance of probabilities, that the grievor did indeed make obscene and threatening comments to the other employee, and that there was just cause for the imposition of discipline.

At the time, the grievor's discipline record was clear. Given the gross nature of the grievor's conduct, substantial discipline would be justified, although in light of her clear record, it may be thought that a penalty greater than 15 demerits might have been excessive. In this case, in any event, I do not consider that 15 demerits was beyond the range of reasonable disciplinary responses to the situation. There was, I conclude, just cause for the imposition of 15 demerits in the circumstances, and this first grievance is dismissed.

The second grievance relates to the discharge of the grievor resulting from the assessment of 60 demerits for irregular timekeeping and time theft. In this case there is no doubt that the offences were committed, as the grievor admitted at the investigation that she had submitted false time claims, although she would not characterize them as theft. The grievor did offer what she considered to be justifications (having worked hard on other shifts, for example) and also indicated (perhaps correctly) that others were aware of her false claims and may even have encouraged her to make them. Such suggestions, however, could not reasonably be considered to justify, for example, the submission of a time slip for a day when the grievor was on vacation, or for the repeated setting down of quitting time at the beginning of a shift, when the grievor then left early.

From the material before me, I have no hesitation in concluding that the grievor was indeed guilty of irregular timekeeping and time theft. Her offence is very serious, and would justify severe discipline and in many cases discharge. At the time of the imposition of discipline, however (leaving aside the 15 demerits referred to above, imposed on the same day), the grievor had a clear discipline record and very substantial seniority. Bearing these factors in mind, it is my view that a substantial suspension should be substituted for the 60 demerits.

Accordingly, the grievance is allowed in part: it is my award that the 60 demerits be removed from the grievor's record, and that a suspension, without pay or benefits for the period from the grievor's date of discharge until September 30, 2016, be substituted therefor. I remain seised of the matter for the purpose of dealing with any questions relating to the implementation of this award.

DATED AT OTTAWA, this 3rd day of November, 2016,

A handwritten signature in cursive script, appearing to read "J. A. W. Kerrill".

Arbitrator