

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

CASE NO. 4532

Heard in Montreal, January 12, 2017

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Company's refusal to allow Conductor Alfredo Cordero of Coquitlam, B.C., to rescind his notice of resignation.

THE COMPANY'S EXPARTE STATEMENT OF ISSUE:

On April 19th, 2013, Conductor Cordero met with Superintendents Dan Sewell and Troy Litowsky to discuss his employment with the Company and the challenges he was facing both as a Conductor as well as in his accommodated position as a Checker / Driver. During this meeting, Conductor Cordero acknowledged that he was not suited for employment with the Company and advised that he wished to resign. Mr. Cordero submitted a signed letter of resignation formally confirming such. Approximately five days later, the Company was advised that Mr. Cordero wished to rescind his resignation, which the Company refused to allow.

The Union contends that the Company failed to make a valiant attempt to ensure that Mr. Cordero was afforded his legal right to have an accredited Union Representative present during the April 19th, 2013 meeting, and further allege that Mr. Cordero was pressured and coerced into signing the resignation form. The Union requests that the Company allow Mr. Cordero to rescind his resignation and that he be reinstated into a position more suited to his abilities, and that this be done in conjunction with local TCRC representatives.

The Company disagrees with the Union's contentions and denies the Union's request.

FOR THE UNION:

(SGD.)

GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. E. Guerin

Director, Labour Relations

There appeared on behalf of the Company:

C. Clark – Assistant Director Labour Relations, Calgary

And on behalf of the Union:

M. Biggar – Counsel, Caley Wray, Toronto

A. Stevens – Counsel, Caley Wray, Toronto

D. Fulton – General Chairman, Calgary

D. Edward – Senior Vice General Chairman, Calgary
A. Cordero – Grievor, Surrey
J. Hnatiuk – Local Chairman, Port Coquitlam

AWARD OF THE ARBITRATOR

This arbitration concerns the Company's refusal that Driver Alfredo Cordero of Surrey, British Columbia, rescind his notice of resignation.

Mr. Cordero is fifty-one years of age and is originally from the Philippines, he speaks English only as a second language with some difficulties. Mr. Cordero was hired in January 2011 as a Conductor. However, he soon experienced trouble while working as a Yard Foreman. His limited proficiency in English affected his work as a Conductor and caused safety concern to his peers and himself. For some two months, CP assigned different managers to ride with and educate Mr. Cordero in hopes that he would better his English and be able to fulfill his duties without issue. Alas, despite the Grievor's efforts, he only achieved limited results and was transferred to the Checker/Crew Bus Driver position in March 2013 until he could be sufficiently proficient to return to his position as Conductor.

On April 17, while on his day off, Mr. Cordero was charged with impaired driving and his license was suspended for a period of ninety days, which made him unable to work in his new temporary position. On the same day he reported the incident to the Company and was called by Superintendent Dan Sewell on April 19th to request a meeting, which the Grievor accepted to attend. Superintendent Troy Litowsky was also

present on that day. A few hours before the meeting, Union representative Jason Hnatiuk was contacted, but could not be reached, to inform him of the upcoming meeting.

From here, however, the Union and the Company give different accounts of the meeting in question. The evidence adduced were mostly emails and memos exchanged between the parties following the meeting of April 19th, 2013, along with the grievance letters sent between the parties. Both versions will be briefly presented to underline their differences.

The Company claims that the informal meeting was organised to discuss the challenges faced by the Grievor both as a Conductor and, subsequently, as a Driver. The Employer submits that approximately halfway through, Mr. Cordero explained that he felt unsuited to work at CP and that he wished to resign. Mr. Cordero was then asked if he understood the ramifications of his decision, to which he allegedly answered positively. The Grievor was then provided a resignation form which he completed and turned in during the meeting. The Employer says that Mr. Cordero did not ask at any point for a Union representative and that, in any event, the meeting was just an informal discussion, not an investigation requiring the presence of the Union.

The Union asserts that when the men discussed the suspension of his driver's license, the Grievor suggested that he take a leave of absence to seek treatment for his alcohol abuse to which Mr. Sewell allegedly responded that it was not possible and that if Mr. Cordero wanted to receive money from CP, that he would have to resign. Mr.

Cordero then felt pressured to resign and signed the documentation that was provided to him. The Union claims that at no time the Grievor was afforded the opportunity to consult a Union representative or seek independent advice. It adds that when the Company failed to contact Mr. Hnatiuk but proceeded with the meeting nonetheless indicates that they intended to pressure the Grievor into resignation. The Union sustains that since no Union representative was present, that the Grievor's resignation was void of effect.

The Union has the onus to show that pressure was indeed put on the Grievor to make him resign. However, the Union and the Employer's versions are in contradiction and the rest of the evidence does not indicate that the Grievor was pressured in any way during his conversation with Superintendents Sewell and Litowsky. By the Grievor's own account, the meeting lasted between one and two hours and no resignation paper had been prepared by the Employer. This indicates that the document had not been prepared in advance by the Company and undermines the Union's assertion that Mr. Cordero was coerced into resignation and that the meeting was planned that way by the Employer.

Moreover, the Grievor had been transferred to a new position which he could not occupy anymore because of the suspension of his driver's license for driving while impaired. It is very plausible that the Grievor did indeed feel like he could no longer work for the Company and further reinforces the Employer's version of events.

To summarize, the evidence presented does not allow the conclusion that Mr. Cordero was forced to resign during his meeting with the Company on April 19th, 2013.

Also, even if the Union had proved that Mr. Cordero was given the choice between resignation and dismissal, which it did not, it would still not constitute a sole, sufficient, ground to allow the grievance, as stated by the arbitrator in the case *Teck Highland Valley Copper v. U.S.W., Local 7619*:

“[71] It also has been established in the jurisprudence that the mere fact that an employee faces a choice between resigning or being discharged is not, in and of itself, a threat which violates the exercise free will [...]”¹

As for the Union’s assertion that without Union representation, the Grievor could not resign, it is simply unstainable. On the subject of resignation, learned authors Brown and Beatty write that:

“Whether an announcement of quitting will be found to be real depends, of course, on the facts of each case. Arbitrators take into account a wide range of factors, including the context in which the statement was made; the amount of time the employee had to reflect on his or her decision; whether the employee had the benefit of his or her union’s advice; and what the employee did immediately thereafter. Putting a resignation in writing is usually taken to be objective evidence that the employee did intend to quit, but there can be circumstances, such as when the document is prepared by the employer, when it is not.”²

It is important to note that having the benefit of getting the Union’s advice is a factor amongst others that an arbitrator has to consider when judging if an employee did intend to resign. While, perhaps, it would have been preferable for the Grievor’s Union representative to be present, it certainly isn’t a prerequisite for the Grievor to resign.

¹[2010] Carswell BC 2853 (British Columbia arbitration)

² *Canadian Labour Arbitration*, 4th ed., 2006, 7:7100

The decisions in **CROA&DR 2028, 1577** and **1554**, cited by the Union, all concern cases where the resignation happened in the context of a pending investigation. As argued by the Employer, article 70.01 of the Collective Agreement does grant the Grievor the right to have a Union representative present, but the Agreement does not confer such a right for non-investigative meetings between an employee and the Company. Indeed, in the case at hand, there was no investigation and the resignation did not happen in a disciplinary context.

In the case *Metropolitan Authority v. A.T.U., Local 508*³, the board of arbitrators refused to recognise a right of representation to a grievor for non-disciplinary measures:

“[65] In *Oshawa General Hospital* the board found that the collective agreement between the parties expressly provided for union representation in cases of discipline but was not prepared to recognize such a right in cases of non-disciplinary termination. This situation has particular significance in the present case where no such provision of the collective agreement requires union representation at any time. On this point the board in *Oshawa General Hospital* stated at p. 86:

For the board to permit the expansion of the right to union representation to termination of employment for whatever reason as submitted by the association, would require an alteration ... to art. 7.02 [of the collective agreement] which would be contrary to the board's authority set out in art. 7.13 of the agreement.

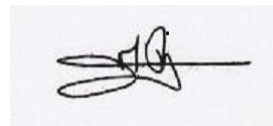
[66] In the present case no specific provision of the collective agreement entitles an employee to union representation. To find that such a right exists would require that we amend the collective agreement in a way that the board in *Oshawa General Hospital* was not prepared to do.”

³ [1988] Carswell NS 664 (Nova Scotia Arbitration)

As in *Metropolitan Authority*, no such right is granted to the Grievor by the Collective Agreement in the case at hand. Perhaps Mr. Cordero regrets his decision to resign from the Company; this is not, however, sufficient grounds to reinstate him in his previous position.

Thus, for all the above-mentioned reasons, the grievance is dismissed.

January 23, 2017

A handwritten signature in black ink, appearing to read 'M. Flynn', is centered within a light gray rectangular box.

**MAUREEN FLYNN
ARBITRATOR**