

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 774

Heard at Montreal, Wednesday, September 10, 1980

Concerning

CANADIAN PACIFIC LIMITED

and

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

DISPUTE:

The issuing of 45 demerit marks and subsequent dismissal of Mr. M. Bedard of Outremont Freight Terminal.

JOINT STATEMENT OF ISSUE:

Mr. Bedard was charged with assaulting Mr. Mario Quimper, Relieving Foreman, at Outremont Freight Terminal on November 21, 1979. An investigation was held and on January 10, 1980, Mr. Bedard was debited with 45 demerit marks and on the same day he was notified of his dismissal account accumulation of demerit marks.

The Union contended that the charge of assault had not been established and requested that Mr. Bedard's record be cleared of the 45 demerit marks and that he be returned to service without loss of seniority and other benefits and that he be reimbursed for lost time.

The Company denied the Union's request.

FOR THE EMPLOYEE:

(SGD.) W. T. SWAIN

GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. B. CHABOT

GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

J. R. Cuin	– Supervisor, Labour Relations, Montreal
S. J. Samosinski	– Labour Relations Officer, Montreal
M. Lepore	– General Shed Foreman, Outremont Freight Terminal, Montreal

And on behalf of the Brotherhood:

W. T. Swain	– General Chairman, Montreal
D. Herbatuk	– Vice-General Chairman, Montreal
P. Vermette	– Local Chairman, Montreal

AWARD OF THE ARBITRATOR

The question is one of fact. If indeed the grievor did assault the relieving foreman (and there is no question of any provocation), then the penalty assessed was not excessive.

The relieving foreman's statement is quite clear. He had gone to the shelter to call the grievor and another employee to come to work. When the employees did not move, the foreman went into the shelter and repeated his instruction. The other employee put on his safety helmet and left. The grievor remained however, and, according to the foreman's statement, placed his foot against the door so that he could not leave, grabbed his coat and pushed him against the wall. On three occasions the grievor pushed the foreman, who finally held off the grievor until he released him and both men left the cabin. The grievor, on this account, was objecting to the foreman's manner of giving instructions, and asking if he would have him investigated again (referring to an earlier matter).

The grievor's version is that he was in the cabin with his feet out when the foreman came by. There were others in the cabin, but the grievor was the last to leave. When he stood up, he slipped and fell against the foreman. This made the foreman lose his balance; the grievor tried to hold him up, but since the grievor himself was off balance, the foreman fell.

These stories are mutually inconsistent, and it is a matter of accepting one or the other. There were no other witnesses.

From the material before me, I have no hesitation in accepting the foreman's account of this matter rather than that of the grievor. While the grievor stated that he was getting on well with the foreman, there do appear to be reasons why he might hold some sort of grudge against him. More importantly, there are inconsistencies in the grievor's account, which seems inherently improbable and, finally, there is evidence that on two occasions, once shortly after the event and later after one of the investigations, the grievor admitted that he had in fact pushed the foreman, although he explained that it was meant as a joke. From a consideration of all of the material, it is my conclusion that the grievor did assault the foreman, and that the demerits assessed were not excessive for such an offence.

Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR