

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1350

Heard at Montreal, Tuesday, May 14, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY (CN ROUTE DIVISION)

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Appeal of dismissal of spare and relief employee J.R. Hood of Stellarton, N.S.

JOINT STATEMENT OF ISSUE:

Mr. J.R. Hood was dismissed from the service of the Company on 26 November 1984 for assaulting his Terminal Manager on 19 November 1984.

The Brotherhood contends that Mr. Hood has been unjustly dismissed and requests that he be re-instated with full seniority and without loss of earnings or benefits. The Company disagrees and has declined the request.

FOR THE BROTHERHOOD:

(SGD.) W. C. VANCE
REGIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) C. A. CANCELLA
DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

K. A. Pride	– System Manager, Human Resources, Etobicoke
C. A. Cancellia	– Director, Human Resources, Etobicoke
B. D. Vosburgh	– Terminal Manager, Stellarton

And on behalf of the Brotherhood:

J. G. Boudreau	– Representative, Halifax
G. T. Murray	– Representative, Moncton
A. Diamond	– Witness, Stellarton
J. Hood	– Grievor, Stellarton

AWARD OF THE ARBITRATOR

The issue raised in this case is whether discharge is the only appropriate penalty that can be imposed upon a long service employee who commits an unprovoked and vicious physical assault on a Supervisor?

The grievor, Mr. J.R. Hood has been employed by the company for approximately twenty years. His record during that period has been impeccable. He has not engaged in any previous conduct that would signal the outburst that triggered his discharge. That action was clearly an isolated incident.

There is no dispute in this case as to what prompted the incident. For better or for worse Mr. Hood perceived that he had been treated unfairly by Mr. B.D. Vosburgh, Terminal Manager, in his being by-passed for a particular work assignment that was made to another employee. The evidence indicated that Mr. Vosburgh acted properly in making the particular assignment but that notion is hardly relevant. Quite clearly the appropriate manner of dealing with any allegation of impropriety in the assignment of work is through the grievance procedure and not by recourse to the law of the jungle.

In any event on November 19, 1984, the grievor approached Mr. Vosburgh at the terminal in Stellarton, N.S., to discuss his complaint and to correct any mistaken notions that Mr. Vosburgh may have had with respect to his readiness to accept work assignments. Unfortunately Mr. Vosburgh found himself in the unhappy circumstance of having to use the washroom facility at the time the grievor approached him. The grievor alleges that Mr. Vosburgh asked him "to step into his office" (namely the washroom) in order to discuss his concern. Mr. Vosburgh denied making this request. In any event, whether the statement was made or not, Mr. Hood interpreted Mr. Vosburgh's use of the washroom facility as a strategy to evade discussion and as a means to treat his concerns in a jocular fashion. Mr. Hood felt he had been demeaned. He reacted by engaging in an aggressive physical assault requiring the intervention of a third party to restrain the grievor from inflicting further damage. As a result Mr. Vosburgh required immediate hospital attention and was put under medical care.

Mr. Hood pleaded guilty to a charge of criminal assault and was fined \$250.00 for his offence. The grievor has expressed remorse over the incident although he has not apologized to Mr. Vosburgh directly for his behaviour.

Although I am satisfied that the grievor's assault was unprovoked by Mr. Vosburgh (at least on the facts herein adduced), I have been persuaded that his actions were prompted by a misunderstanding of his entitlements to work assignments off the employer's spareboard. Underlying the grievor's uncharacteristic behaviour appears to be an underlying concern for his job security that apparently has resulted from the employer's recent organizational changes and the rationalization of its work force. Although this concern cannot excuse the grievor's unwarranted conduct it nonetheless may serve to explain the uncharacteristic nature of the outburst.

At the crux of the matter is whether the discharge of the grievor, a long service employee with an impeccable record, was the only disciplinary recourse available to the employer for his isolated and momentary outburst? I am simply prepared to give the grievor one last chance and direct his reinstatement subject to the following terms and conditions:

- (i) the period between the grievor's date of discharge and his reinstatement shall be treated as a suspension without pay;
- (ii) the grievor shall be treated as a probationary employee for disciplinary purposes for a period of one year;
- (iii) any recurrence of a like incident of physical assault of a supervisor will result in his immediate dismissal subject to recourse to the grievance procedure;
- (iv) the grievor must, as a condition of his reinstatement extend Mr. Vosburgh an apology for his behaviour wherein he undertakes to comply with the work assignments received by him off the spareboard.

The Board shall remain seized of the implementation of this decision.

(signed) DAVID H. KATES
ARBITRATOR