

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1504

Heard at Montreal, Wednesday, April 9, 1986

Concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

The discharge of Conductor J. J. Gagné, effective June 4, 1982.

#### **JOINT STATEMENT OF ISSUE:**

On April 6, 1982, Conductor J. J. Gagné submitted a Report of Injury to the effect that he had been injured on duty at Limolieu, Quebec.

In investigating the circumstances connected with the injury, the Company determined that Conductor Gagné had not sustained the injury on the day, at the location or in the manner stated on the report filed by him. Rather, the injury was sustained on April 5th, at Clermont, Quebec, as a result of an altercation with a fellow employee.

Following investigation, Conductor Gagné was discharged. The reasons for discharge as cited on CN Form 780 read as follows:

Your behaviour on April 5, 1982, at Clermont, Quebec was unacceptable in that you assaulted a fellow worker while you were assigned as Conductor on Train 522;

You falsified Form 3903 on April 6, 1982, by making a false statement reporting a work- related accident on April 5, 1982;

You neglected to report what really happened at Clermont, Quebec, on April 5, 1982, failed to carry out your duties as a Conductor, and violated Rules "L" and "M" of the Uniform Code of Operating Rules;

During the investigation, you gave a version of the facts that you were later to acknowledge was totally untrue.

The Union appealed on the grounds that discharge was too severe a penalty for the infractions committed.

The Company declined the Union's appeal on behalf of Conductor Gagné.

#### **FOR THE UNION:**

**(SGD.) B. LECLERC**  
GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) M. DELGRECO**  
FOR: ASSISTANT VICE-PRESIDENT LABOUR RELATIONS.

There appeared on behalf of the Company:

M. E. Healey	– Manager Labour Relations, Montreal
J. B. Bart	– Labour Relations Officer, Montreal
M. C. Darby	– Coordinator Transportation, Montreal
J. C. Dionne	– Supervisor Workers Compensation, Montreal

D. C. St. Cyr – Labour Relations Assistant, Montreal

And on behalf of the Union:

B. Leclerc – General Chairman, Quebec

R. A. Bennett – General Chairman, Toronto

### **AWARD OF THE ARBITRATOR**

The uncontradicted evidence indicated that the grievor engaged in a physical altercation with a colleague, Mr. Lafontaine, resulting in an injury to his person. The altercation actually aggravated a shoulder injury the grievor had sustained some years previously as a result of a car accident.

The grievor had initially reported his injury as a work-related accident he had encountered upon detraining from the caboose area of his train on April 5, 1982. The grievor's colleagues provided the Employer with contradictory statements as to the manner in which the grievor's injuries were sustained. The grievor's recitation that he had endured a work-related injury during the course of employment was admitted as being a total fabrication.

Although the grievor's altercation with Mr. Lafontaine may have given rise *per se* to the imposition of discipline it is not important in the disposition of this grievance to dwell on that event. I am prepared to accept the Trade Union's version that the episode was an isolated aberration that was motivated by the grievor's personal, domestic problems. Moreover, there may very well be some medical explanation for his unorthodox behavior. Nor does it matter, from the perspective of my dealing with the legitimacy of the grievor's discharge, to concern myself with whether the grievor's actions amounted to an assault or an attack or merely a mild shoving match. Quite clearly the grievor may have felt he was provoked by a remark made by Mr. Lafontaine about his handling of his conductor's duties that in the last analysis did not warrant the altercation that followed.

The real issue that has been raised in this case pertains to the aftermath. There is no doubt in my mind that the grievor's fabrication of the cause of his injury was designed to cover up the real incident that had admittedly occurred. It was a deliberate, calculated attempt to deceive the Company. Moreover, at best, the objective was to deprive the Company of the opportunity to investigate and ultimately assess the grievor and Mr. Lafontaine any disciplinary penalty arising out of the incident.

But, of more significance, despite the grievor's admission he still sought to establish the basis for a claim to compensation both under the Company's private insurance plan and before the Workmen's Compensation Board arising out of his injuries. And the grounds for the compensation claims was based, not on the truth (i.e., the altercation) but on the fabricated story of a contrived accident. I make absolutely no comment in this case as to whether the injuries incurred by the grievor arising out of the altercation with Mr. Lafontaine would have resulted in a legitimate claim for compensation under any insurance plan.

It suffices for my purposes however to find that the grievor knowingly engaged in a deliberate deception, for a number of objectives, in order to cheat the Company.

As a result this grievance is denied.

**(signed) DAVID H. KATES**  
**ARBITRATOR**