

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1722

Heard at Montreal Tuesday December 8, 1987

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS,

DISPUTE:

Twenty-five (25) demerits assessed Mr. Martineau's record for an act of insubordination and use of violence, both physical and verbal, in the work place.

JOINT STATEMENT OF ISSUE:

On November 11, 1986, Mr. M. Martineau was summoned to an investigation relating to an act of insubordination that occurred on November 4, 1986. Following the investigation Mr. Martineau's record was assessed twenty-five (25) demerits.

The Union contended that the Company was in violation of Article 26.1 of the Collective Agreement.

The Union contended that the Company's clear violation of the Collective Agreement provoked the incident that occurred on November 4, 1986, and that the employees involved in the incident of November 4, 1986 were not treated equally.

Furthermore, the Union contended that the incident of November 4, 1986 did not warrant 25 demerits being assessed Mr. Martineau's record and requested that the 25 demerits be removed from the employee's record. We further requested that Mr. Martineau be reimbursed 2 hours and one half as a result of being sent home, without pay, following the incident of November 4, 1986.

The Company declined the grievance.

FOR THE BROTHERHOOD:

(SGD) C. PINARD
FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) J. P. DEIGHAN
FOR: DIRECTOR OF MATERIALS

There appeared on behalf of the Company:

D. J. David	– Labour Relations Officer, Montreal
P. Macarone	– Supervisor Training and Accident Prevention, Materials - System
J. P. Deighan	– Assistant Director Of Materials
J. Y. Noel	– Assistant Manager of Material, Angus
A. Bourassa	– General Stores Supervisor, Angus
B. Girard	– Supervisor Inventory Reports, Angus

And on behalf of the Brotherhood:

C. Pinard	– Vice-General Chairman
J.H. Germain	– General Chairman

R. Huard

– Grievance Chairman, Lodge 1267

AWARD OF THE ARBITRATOR

The evidence establishes that Mr. Martineau did shove his superior, Mr. Bourassa. As a result, he pleaded guilty to a charge of having threatened his superior. On February 19, 1987, he was ordered by a magistrate under Part XVI of the Criminal Code "... not to communicate directly or indirectly with André Bourassa" following a complaint brought forward by his superior.

There can be no doubt that the Company had reason to impose a severe measure of discipline. The grievor's physical threat and insubordination were not provoked by his superior. The latter had simply refused to give the grievor an authorized leave of absence for reasons that were valid and in accordance with the requirements of Article 26 of the Collective Agreement. In these circumstances the assessment of 25 demerit marks was warranted and the grievance must, therefore, be dismissed.

(signed) MICHEL G. PICHER
ARBITRATOR