

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1842

Heard at Montreal, Tuesday, 8 November 1988

Concerning

CANADIAN PARCEL DELIVERY (CP EXPRESS & TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

UNION:

The dismissal of employee L. Gordon, CanPar, Montreal, Quebec, for allegedly refusing a direct order from another employee (P. Cunningham) and his subsequent conduct towards employee P. Cunningham.

COMPANY:

The dismissal of employee L. Gordon, CANPAR, Montreal, Quebec, for allegedly refusing a direct order from an acting Hub Foreman (P. Cunningham) and for his subsequent conduct towards P. Cunningham.

UNION'S STATEMENT OF ISSUE:

On December 23, 1987, employee L. Gordon was involved in a verbal confrontation with another employee (P. Cunningham) who was under the impression he had some sort of authority. Consequently, employee L. Gordon was dismissed from service over the incident.

The Union grieved the dismissal, requesting the employee be reinstated with full salary and compensated for all benefit plans, and all seniority rights since his dismissal.

The Company declined the Union's request.

COMPANY'S STATEMENT OF ISSUE:

On December 23, 1987, employee L. Gordon was involved in a confrontation with an acting Hub Foreman (P. Cunningham). A short time after this confrontation, Mr. Gordon allegedly challenged Mr. Cunningham to "go outside", and struck him on the side of the head. Consequently, employee L. Gordon was dismissed from service over the combined incident.

The Union grieved the dismissal, requesting the employee be reinstated with full salary and compensated for all benefit plans, and all seniority rights since his dismissal.

The Company denied the Union's request.

FOR THE UNION:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) B. D. NEILL
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

D. D. Francis – Counsel, Toronto
D. J. Bennett – Labour Relations Officer, Toronto
P. Cunningham – Witness, Acting Hub Foreman, Montreal
J. Crosbie – Witness, Line Haul Supervisor, Montreal
R. St. James – Witness, Hub Supervisor, Montreal
J. Taylor – Witness, Regional Manager, Quebec

And on behalf of the Union:

D. Wray – Counsel, Toronto
J. Bechtel – Vice-General Chairman, Toronto
M. Gauthier – Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

The evidence establishes that the grievor, Mr. L. Gordon, used abusive language, refused to follow clear instructions in a manner that was insubordinate and, finally, physically assaulted his supervisor, Mr. P. Cunningham. The grievor, who is a relatively junior employee, did not attend at the hearing, and indeed was entirely out of touch with the Union for a period of several months.

A deliberate refusal to follow a supervisor's instructions, coupled with strong verbal abuse and, finally, physical assault by striking the supervisor in the head, as occurred in this case, is prima facie extreme conduct which could, absent compelling mitigating circumstances, justify an employee's discharge. In this regard it should be emphasized that assault of a supervisory officer strikes at the very relationship of authority essential to the orderly conduct of business in any workplace, and cannot, as a general matter, be treated in the same way as an altercation between bargaining unit employees.

When this matter was first scheduled for hearing in September of 1988 the grievor failed to appear. The Union then requested an adjournment to the present date, in hopes of finding the grievor in preparation for the arbitration hearing. It appears that it has been entirely unsuccessful in that regard, notwithstanding its best efforts. In these circumstances, in view of the unrebutted evidence of the Company's witness, Mr. Cunningham who was the victim of the assault, and in light of the fact that there is no evidence whatever to suggest mitigating circumstances that should favour a reduction in penalty, or indeed that the grievor is interested in continuing his employment, the grievance must be dismissed.

November 10, 1988

(Sgd.) MICHEL G. PICHER
ARBITRATOR