

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1843

Heard at Montreal, Tuesday, 8 November 1988

Concerning
CANADIAN PARCEL DELIVERY
(CP EXPRESS & TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The dismissal of CanPar employees W. Charles and A. Farah, Toronto, Ontario, for fighting on company premises.

JOINT STATEMENT OF ISSUE:

By letter dated March 16, 1988, employees W. Charles and A. Farah were notified of their termination for fighting on company premises on March 8, 1988.

The Union progressed this matter on the basis that dismissal was severe, considering in a similar incident involving two other employees, 20 demerits were assessed.

The Union requested these employees be reinstated without loss of salary, benefits, and seniority and that 20 demerits be assessed to each employee.

The Company denied the Union's request.

FOR THE UNION:

(Sgd) J. J. BOYCE

General Chairman

System Board of

Adjustment 517

FOR THE COMPANY:

(Sgd) D. J. BENNETT

Labour Relations Officer

There appeared on behalf of the Company:

D. D. Francis	- Counsel, Toronto
D. J. Bennett	- Labour Relations Officer, Toronto
E. Nulle	- Hub Manager, Toronto
A. Crombie	- Dispatcher, Toronto

And on behalf of the Union:

D. Wray	- Counsel, Toronto
J. Bechtel	- Vice-General Chairman, Toronto
M. Gauthier	- Vice-General Chairman, Montreal
A. Farah	- Grievor

AWARD OF THE ARBITRATOR

The evidence establishes that the grievor, Mr. A. Farah, was involved in an altercation with another employee, Mr. W. Charles, who has since abandoned his grievance. While the accounts of the grievor and

Mr. Charles respecting what transpired differ slightly in their detail, the general outline of events is not in dispute. It appears that, for a short time, Mr. Farah left his work station where he had been loading a trailer. This caused the parcel chute leading to that location to back up, which in turn required Mr. Charles, who was working nearby, to take remedial action. While according to the grievor Mr. Charles had the option of diverting the parcels destined to the grievor's trailer down another conveyor, he chose instead to knock them onto the floor. When Mr. Farah returned and discovered what had happened he and Mr. Charles became involved in a scuffle, during which Mr. Charles held him by the throat. When they disengaged, by Mr. Farah's own admission, he made a statement to Mr. Charles to the effect that he would meet him after work if he wanted to fight. Both employees then returned to their work.

It appears that some thirty minutes later the grievor was required to proceed to the "incompatibles" area, a section of the terminal where irregular shaped parcels are stored. Mr. Charles was then working in that area. When the two confronted each other the grievor apparently asked Mr. Charles whether he had a problem, prompting Mr. Charles to push him. A second scuffle ensued during which the grievor butted Mr. Charles with his head, with both of them finally falling down and wrestling on the terminal floor until the fight was promptly broken up by a supervisor. Both employees were discharged as a result of this incident.

Fighting in plainly unacceptable conduct in the workplace, deserving of serious discipline. It is not axiomatic, however, that an altercation between two employees occurring in the heat of the moment is deserving of discharge, particularly where such conduct is clearly an uncharacteristic departure from their normal conduct. The grievor has little or no prior disciplinary record. Canadian arbitration jurisprudence is replete with cases which confirm that a heated verbal exchange and/or physical altercation between two employees on the spur of the moment does not necessarily justify their discharge. (See e.g. Canadian General Electric Co. Ltd. (1950), 2 L.A.C. 688 (Laskin); Eastern Steel Products Co. (1966), 17 L.A.C. 212 (Hanrahan); Liquid Carbonic Canada Ltd. (1972), 24 L.A.C. 309 (Weiler); Home Hardware Stores Ltd. (1984) 20 L.A.C. (3d) 76 (T. Jolliffe).)

While counsel sought to characterize the altercation between the grievor and Mr. Charles as two distinct happenings, maintaining that they were not a spur of the moment event, the Arbitrator has some difficulty with that position. The evidence confirms to my satisfaction that for the period of the thirty to thirty-five minutes in question Mr. Charles and Mr. Farah had a single incident of personal conflict that remained at or near the flash point. While that characterization does not minimize the seriousness of the grievor's error, or justify his willingness to participate in a fight and threaten to fight another employee after work, it is a factor which, taken together with his prior record, should have given the Company pause as to whether discharge was appropriate in the circumstances, and whether indeed it could be expected that the grievor, who never before engaged in such conduct, could not be expected to learn his lesson from some lesser degree of discipline.

In the Arbitrator's view the grievor has been a candid and

forthcoming witness who now appreciates the error of his conduct. His good prior record and the fact that he has never before been involved in a fight with a fellow employee must weigh in his favour.

It also appears, from the record of the Company's investigation, that Mr. Farah did not attempt to conceal his involvement in the incident from the very outset. In all of the circumstances the Arbitrator must conclude that the Company knew, or reasonably should have known, that discharge would not be a necessary measure of discipline in the circumstances of this case. In my view the imposition of twenty-five demerits would have been an appropriate sanction to bring home to the grievor the severity of his misconduct and the need to avoid the occurrence of any such conduct in the future.

For these reasons the grievor shall be reinstated, forthwith, with full compensation and benefits, and without any loss of seniority, with his disciplinary record to reflect the assessment of twenty-five demerits effective March 16, 1988. I retain jurisdiction in the event of any dispute in respect of the implementation of this award.

November 10, 1988

(Sgd.) MICHEL G. PICHER

ARBITRATOR