

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1922

Heard at Montreal, Tuesday, 13 June 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed Conductor R. Hale of London, Ontario effective 30 May 1986.

JOINT STATEMENT OF ISSUE:

At approximately 1900 hours on 30 May 1986, an altercation involving Conductor R. Hale and Locomotive Engineer P. Campbell took place at Mount Brydges, Ontario, during their tour of duty on Extra 9427 West. Following an investigation into the matter, the record of Conductor Hale was assessed with 45 demerit marks and a suspension for: "... physical assault on a fellow employee resulting in a lost time injury while employed as Conductor Extra 9427 West 30 May 1986 at Mount Brydges."

The Union appealed the matter contending that, in light of the evidence, the discipline assessed was unfounded, unwarranted and extremely severe.

The Company declined the Union's appeal.

FOR THE UNION:

(SGD) T. G. HODGES
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

P. D. Morissey – Labour Relations Officer, Montreal
J. B. Bart – Manager, Labour Relations, Montreal
S. F. McConville – Labour Relations Officer, Montreal

And on behalf of the Union:

T. G. Hodges – General Chairman, St. Catharines
G. Binsfeld – Secretary, G.C.A., St. Catharines
G. Bird – Local Chairman, Montreal
R. E. Hale – Grievor

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied on the basis of the material filed that the grievor did engage in a severe and unprovoked physical assault of a fellow employee, which resulted in lost time injuries to the victim of the attack, Locomotive Engineer P. Campbell. The grievor's actions lead to his conviction for assault causing bodily harm, resulting in both a fine and incarceration.

It is well established that unprovoked assault may justify the most serious of disciplinary consequences (see **CROA 1701, 1722 and 1858**). It is arguable that in some circumstances conduct of this kind would justify discharge. By the assessment of forty-five demerits, the Company saved the grievor from that result, mitigating his penalty in a manner consistent with the recognition of his length of service, his clear disciplinary record and the fact that this was an apparently uncharacteristic and isolated event.

On the whole, bearing in mind the grievor's continuing denial of what happened and his apparent lack of remorse, the Arbitrator cannot conclude that the Company did not have just cause to impose discipline, and that the demerits imposed were not within the appropriate range of penalty in the circumstances.

For the foregoing reasons the grievance must be dismissed.

June 16, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR