

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2018

Heard at Montreal, Wednesday, 11 April 1990

Concerning

CANADIAN PARCEL DELIVERY

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

On October 30, 1989, employee Richard Legault of Lachine was assessed sixty (60) demerit marks by the Company: **a)** Refused to follow orders by his supervisor; **b)** Assault on an employee; **c)** Assault on a supervisor.

Following the accumulation of sixty (60) demerit marks on his record, employee Richard Legault was dismissed by the Company on November 20, 1989.

JOINT STATEMENT OF ISSUE:

Due to the circumstances and the related incidents of October 30, 1989, that the acts alleged by the Company are not imputable to Mr. Legault and because his disciplinary record was intact, the Union maintains that the sixty (60) demerit marks assessed to Mr. Legault are more than unjustified and that his dismissal was excessive and without just cause.

The Union claims that the sixty (60) demerit marks assessed to him be withdrawn and he be reinstated on his job with all his seniority rights and he be compensated for all loss in pay.

The Company maintains that the grievance should be rejected and that the dismissal is justified.

FOR THE UNION:

(SGD) J. J. BOYCE
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD) J. G. CYOPECK
VICE-PRESIDENT & ASSISTANT GENERAL MANAGER

There appeared on behalf of the Company:

L. Béchamp	– Counsel, Montreal
G. Savoie	– Regional Director, Montreal
G. Claude	– Supervisor, P&D, Montreal
O. C. Meikle	– Witness
C. McConnell	– Witness

And on behalf of the Union:

K. Cahill	– Counsel, Montreal
M. Gauthier	– Vice-General Chairman, Montreal
Y. Fournier	– Witness
R. Legault	– Grievor

AWARD OF THE ARBITRATOR

It is not disputed that Mr. Legault arrived at work late on October 30, 1988. His new supervisor, Mr. J. Salmon, had already assigned Mr. Legault's regular work on Conveyor Belt "J" in the warehouse to Mr. Charles McConnell, another employee. Mr. Salmon then ordered Mr. Legault to work in another part of the warehouse, unloading vans and to work in an area commonly called "the pit" where it appears that the working conditions are somewhat less than pleasant.

The grievor did not hide his displeasure when faced with this directive. After the lunch break, he returned to Conveyor Belt "J" in an attempt to resume his regular position. Mr. Salmon again refused to give it to him and it is then that an altercation unfolded.

The evidence of the witnesses differs regarding the details of Mr. Legault's conduct at that moment. For the purposes of this award, however, it is sufficient to say that the only proven facts are the following. Mr. Legault spoke in an aggressive and insulting manner to both Mr. McConnell and Mr. Salmon. He pushed Mr. McConnell lightly when passing behind him on a gangway. When Mr. McConnell pushed him back, Mr. Legault turned around and advanced towards Mr. McConnell with a menacing air. At that moment a third employee, Mr. Osborne Meikle, intervened to hold back Mr. Legault, who immediately stopped being aggressive towards Mr. McConnell. Once free of the grip of Mr. Meikle, the grievor crossed a moving conveyor, in a manner which is forbidden, and gave Mr. Salmon, his supervisor, a heavy push on the shoulder with his hand. Mr. Salmon told him that if Mr. Legault was refusing to work in "the pit" he could leave the premises. The foregoing encompasses all of the acts of aggression proven against the grievor before the Arbitrator.

It is not disputed that some moments later, when Mr. Salmon conducted him to the outside of the warehouse, the supervisor punched and kicked Mr. Legault, causing him serious injuries. Mr. Legault was off work for more than two weeks as a result. As for Mr. Salmon, he was fired. As Mr. Salmon was not a witness, the only evidence concerning this aspect of the incident is that of Mr. Legault, who denies having punched Mr. Salmon again. The account given by Mr. Yves Fournier, a truck driver who himself saw a part of Mr. Salmon's attack on Mr. Legault, does not contradict in any meaningful way the version of these events given by the grievor.

In sum, the evidence establishes that Mr. Legault refused, without justification, to do the work which had been assigned to him, lightly pushed Mr. McConnell and then approached him in a menacing manner and, finally, gave Mr. Salmon a single push with his hand. The Arbitrator judges that this conduct is unacceptable, whatever the reason, and that it deserved a serious measure of discipline. It seems to me, however, that this is not a matter of several infractions, but rather of one event which developed, in stages, in the heat of the moment and was provoked by particular circumstances. The facts in this grievance resemble those established in **CROA 1843**. In that case two warehousemen in a sister company to this employer involved themselves in a scuffle inside the warehouse. The Arbitrator accepted that that was a spur of the moment altercation between two employees completely outside their normal conduct. For these reasons, the grievance was allowed.

In my opinion, the proven events in this grievance are necessarily comparable, except that there is in the conduct of Mr. Legault, above all in his refusal to accept the work which he was given, an element which raises serious questions relative to his capacity to accept directives. In the circumstances, I consider that this negative factor must limit Mr. Legault's right to any monetary compensation. On the other hand, in light of the evidence and given the positive discipline record of Mr. Legault, even though he is not a long service employee, I find that there are mitigating circumstances which justify a reduction in his disciplinary penalty. Among other things, it seems to me that the reasonable reaction of the Company in face of the brutality of Mr. Salmon was wrongly carried over to its treatment of Mr. Legault.

For these reasons, the Arbitrator orders that Mr. Legault be reinstated into his employment, without loss of seniority and without compensation for wages and benefits. The period of time since his discharge to be noted on his discipline record as a suspension for the three infractions noted in the letter of November 20, 1989, except that the third is to be amended to read:

3. Pushing a supervisor in the warehouse.

As well, Mr. Legault's discipline file will be reduced to thirty demerits. It is to be hoped that, in the future, the grievor will understand that he does not have the right to refuse the duties which are assigned to him by his supervisors.

April 12, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR