

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2349

Heard at Montreal, Tuesday, 13 April 1993

concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### BROTHERHOOD OF LOCOMOTIVE ENGINEERS

#### DISPUTE:

Appeal of discharge of Locomotive Engineer F.A. Lammi of Capreol effective 24 September 1991.

#### JOINT STATEMENT OF ISSUE:

On 28 August 1991 at approximately 0610 hours Locomotive Engineer Lammi entered CN property while off duty and physically assaulted a fellow employee, resulting in a personal lost time injury.

Following investigation into the incident, Mr. Lammi was discharged from Company service for physical assault of an on-duty CN Rail employee.

The Brotherhood appealed the discharge of Mr. Lammi on the grounds that the discipline is excessive and there are mitigating circumstances.

The Company declined the Brotherhood's appeal.

#### FOR THE BROTHERHOOD:

#### FOR THE COMPANY:

**(SGD.) C. HAMILTON**  
GENERAL CHAIRMAN

**(SGD.) A. E. HEFT**  
for: VICE-PRESIDENT, GREAT LAKES REGION

There appeared on behalf of the Company:

J. Vaasjo	- Labour Relations Officer, Toronto
A. E. Heft	- Manager, Labour Relations, Toronto
D. W. Coughlin	- Manager, Labour Relations, Montreal
D. Brodie	- System Labour Relations Officer, Montreal
J. J. Campbell	- Assistant Superintendent, London
M. S. Fisher	- Director, Crew Management Centre, Moncton
J. Vena	- Coordinator, Transportation, Montreal
R. Bateman	- Labour Relations Officer, Toronto
D. K. House	- District Superintendent, N.O.D., Toronto

And on behalf of the Brotherhood:

C. Hamilton	- General Chairman, Kingston
F. A. Lammi	- Grievor

### **AWARD OF THE ARBITRATOR**

On the basis of the material filed the Arbitrator is satisfied that there are mitigating circumstances to be considered which are favourable to the grievor. Firstly, it is not disputed that there was a degree of provocation with respect to the assault which the grievor committed upon another employee. It is common ground that Mr. Lammi reacted in response to a report from his daughter that the evening prior the employee in question had tried to drive her off the road in his vehicle. While the Arbitrator agrees fully with the Company's representations that it was inappropriate for Mr. Lammi to respond as he did, his was, nevertheless, not an act of gratuitous violence without some provocation.

The grievor is an employee of some thirty-two years' service who has never previously been disciplined for aggressive conduct towards another employee. While it appears that the grievor was involved in one or two previous arguments or altercations with another employee, the Company chose not to progress those matters to the level of discipline. It cannot, therefore, treat them as such in these proceedings.

Lastly, the evidence discloses that following his discharge Mr. Lammi obtained professional counselling to better assist him with "anger management". The declaration of a medical doctor, and of a professional counsellor, filed before the Arbitrator support the Brotherhood's position that he is able to return to work. In these circumstances the Arbitrator deems it appropriate to reinstate Mr. Lammi into his employment, without compensation. His reinstatement must be viewed, however, as predicated upon his own understanding that physical violence, for whatever reason, is an unacceptable form of response incompatible with the maintenance of a safe and secure workplace. Any recurrence of such behaviour will inevitably attract the most serious of disciplinary consequences.

For the foregoing reasons the grievance is allowed, in part. Mr. Lammi shall be reinstated into his employment, without compensation and without loss of seniority.

April 16, 1993

**(sgd.) MICHEL G. PICHER**  
**ARBITRATOR**