

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2557

Heard in Montreal, Wednesday, 14 December 1994

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS  
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)**

**EX PARTE**

**DISPUTE:**

The assessment of 25 demerit marks to Locomotive Engineer M.W. Rainford for “conduct unbecoming an employee”, effective June 18, 1993.

**COUNCIL’S STATEMENT OF ISSUE:**

On June 18, 1993, a heated discussion took place between Mr. Rainford and Special Agent Muckle concerning a prior incident that took place on the property on March 30, 1993.

On July 18, 1993, Mr. Rainford was required to attend a formal investigation in order to provide an employee statement in connection with his alleged conduct unbecoming and was thereafter assessed 25 demerits.

It is the Brotherhood’s contention that, due to various mitigating factors surrounding this incident, the discipline was too severe and therefore should be greatly reduced.

The Company declined the Brotherhood’s appeal.

**FOR THE BROTHERHOOD:**

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

There appeared on behalf of the Company:

A. E. Heft	– Manager, Labour Relations, Toronto
K. Peel	– Counsel, Toronto
C. Morgan	– Labour Relations Officer, Toronto
L. A. Muckle	– CN Police Constable, Hamilton

And on behalf of the Brotherhood:

P. Hunt	– Counsel, Ottawa
C. Hamilton	– General Chairman, Toronto
M. W. Rainford	– Grievor

### AWARD OF THE ARBITRATOR

The facts before the Arbitrator disclose that Locomotive Engineer Rainford engaged in what can only be described as a belligerent and unprovoked verbal harassment of CN Special Agent L.A. Muckle in the Hamilton Yard on June 18, 1993. The evidence discloses that when Officer Muckle, who was then on duty in plain clothes at the yard, entered the booking room in the yard coordinator's tower she was approached by the grievor who angrily expressed his displeasure with the manner in which she had previously discharged her duty. It appears that some two and one-half months previous Officer Muckle had apprehended and charged three employees for consuming alcohol in the Hamilton Yard parking lot, as a result of which they received discipline in the form of demerits.

Among other things said by Locomotive Engineer Rainford to Officer Muckle, over an extended period of verbal exchange, are the following comments: "Hey look at all the employees drinking in the parking lot, you better hurry – They got twenty-five brownies because of you – Just go out and do your job – I heard you lied as well – Just leave the CN employees alone – Why don't you do your job instead of harassing us? – So what are you going to do now? – You think you're so tough."

The evidence discloses that the unfortunate conduct of Mr. Rainford continued over the better part of an hour. He followed Officer Muckle around, both inside the yardmaster's office and outside, for a substantial period of time pursuing what he later characterized as his "expression of opinion". The evidence further discloses that toward the end of the encounter, while Officer Muckle was in the yard in the process of apprehending an employee who had concealed stolen property in the trunk of his vehicle, Mr. Rainford made comments to the employee in question to the effect he should not cooperate with her. He relented from interfering only when she threatened to charge him with obstructing justice. Still later, Mr. Rainford took it upon himself to go on the air on one of the channels of the yard radio to make further disparaging comments about Officer Muckle, until she intervened on the air to protest.

Persons assigned the duties of peace officers, like Officer Muckle, and police officers generally, perform a difficult, sometimes dangerous and often thankless task. Their work as peace officers is scarcely assisted if they are to be made the brunt of disparaging and insulting remarks while attempting to go about their duties. We do not live in a police state, and in a proper context it may not be inappropriate for an individual to express disagreement with a decision taken by a police officer. What transpired in the case at hand, however, was not the expression of an opinion. It was a systematic course of verbal harassment prompted by uncontrolled anger, calculated to discourage Officer Muckle from the diligent and faithful performance of her obligations in the future. It was, by any account, a highly improper attempt to interfere with the discharge of her duties and, by extension, to undermine the legitimate interests of the employer. Because of the special authority with which Officer Muckle was clothed, the Arbitrator must reject out of hand the suggestion of counsel for the Union that what occurred was little more than a heated exchange between two employees.

Is there any basis to reduce the penalty assessed in the circumstances? A review of the material before me confirms that there is none. In the record of the disciplinary investigation which followed Mr. Rainford's actions there is no suggestion of any acknowledgment on his part that he did anything wrong. Indeed, his assertion at one point that Officer Muckle somehow attempted to violate his rights under Section 2 of the **Charter of Rights and Freedoms** speaks volumes about the need of this employee to be made to appreciate the importance of civility and professionalism in workplace communications.

Mr. Rainford's grievance is dismissed.

16 December 1994

(signed) MICHEL G. PICHER  
ARBITRATOR