

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2735

Heard in Calgary, Wednesday, 15 May 1996

concerning

INTERLINK FREIGHT SYSTEMS INC.

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The termination of Calgary employee Gary Maetche on or about February 21, 1996, as a result of "improper conduct towards a customer" on February 6 and 8, 1996.

COMPANY'S STATEMENT OF ISSUE:

Mr. Maetche was involved in serious altercations (including verbal abuse and physical threats) towards Mr. Williamson, Regional Manager, National Fast Freight, on February 6 and 8, 1996. National Fast Freight was a major customer to InterLink Freight Systems and conducts its business from space at our Calgary Terminal. This improper conduct towards a customer resulted in the loss of a \$500,000 account (NFF).

Mr. Maetche was given notice of an investigative interview, in accordance with article 8 of the collective agreement, on February 14, 1996.

On February 16, 1996, Mr. Maetche's investigative interview was conducted and he was subsequently held out of service pending the review of this entire matter with head office personnel, given the severity of the issue.

On February 21, 1996, Mr. Maetche was terminated for improper conduct towards a customer on February 6 and 8, 1996, resulting in the loss of a \$500,000 account (NFF), a very serious offence.

The Company contends that based on the severity of the situation, and the ramifications which resulted, (i.e., the loss of a major account), the discharge was warranted.

The Union and the grievor deny that the grievor was verbally abusive and deny that the grievor made threats to Mr. Williamson. In the alternative, it is the Union's position that, if obscenities were uttered by the grievor, they should be considered "shop talk". The Union's position is that the discharge should be set aside and the grievor should be reinstated with full compensation.

FOR THE COMPANY:

(SGD.) B. F. WEINERT

DIRECTOR, EMPLOYEE RELATIONS

There appeared on behalf of the Company:

M. D. Failles	– Counsel, Toronto
B. F. Weinert	– Director, Employee Relations, Toronto
W. B. Smith	– Regional Manager, BC & Seattle
C. Gagné	– Terminal Manager, Calgary
J. Goleski	– Operations Supervisor, Calgary
K. Osterhout	– P&D Supervisor, Calgary
R. Forest-Smith	– Account Manager, Calgary
B. Williamson	– Regional Manager, Alberta National Fast Freight

And on behalf of the Union:

D. Ellickson	– Counsel, Toronto
D. E. Graham	– Assistant Division Vice-President, Regina
A. Kane	– Local Representative, Vancouver
H. Vlemming	– Witness
K. Osterhout	– Witness
I. Wilkinson	– Witness
R. Morrison	– Witness
G. Maetche	– Grievor

AWARD OF THE ARBITRATOR

Upon a review of the evidence the Arbitrator is compelled to the unfortunate conclusion that Mr. Maetche was involved in a verbal altercation with Mr. Brian Williamson, an important customer of the Company. The evidence of Mr. Williamson, supported by the independent testimony of Supervisor John Goleski, whom the Arbitrator judges to be a careful and credible witness, confirms that on February 6, 1996, the grievor initiated a verbal altercation with Mr. Williamson when the latter passed by a trailer which he was sweeping out. It does not appear disputed that the motive for Mr. Maetche's addressing Mr. Williamson was his dissatisfaction with the manner in which he had observed Mr. Williamson driving a tractor-trailer into the yard some days prior. Mr. Williamson relates that Mr. Maetche stated to him that if he saw him driving the same way again he would pull him out of his truck and that he would "... beat the shit out of him". Mr. Williamson also states that both he and Mr. Maetche used obscenities in their exchange. Mr. Maetche denies having said anything more than that Mr. Williamson would be in trouble should he drive in the same manner, and states that he did not use obscenities in speaking to Mr. Williamson. Mr. Goleski, who was some ten to fifteen feet away, overheard the noise being made by the two men as they spoke. Although he states that he did not hear the specifics of what was said, he is clear in his evidence that he did hear Mr. Maetche say "Fuck you" or similar words to Mr. Williamson.

Mr. Williamson's evidence establishes that the incident with Mr. Maetche became the culminating event which caused him to cancel his contract with the Company. Although it would appear that there were other causes for concern which contributed to that decision, the Arbitrator is compelled to accept Mr. Williamson's testimony that but for the incident in question that cancellation would, in all likelihood, not have occurred. As the Company's *ex parte* statement discloses, the grievor's actions therefore resulted in the loss of work from Mr. Williamson's Company, National Fast Freight, work of a substantial value estimated in evidence as being in the vicinity of \$400,000.00 per year.

It is not disputed that the grievor has been a good employee in his some eight years of service, during which time he did not incur any prior discipline, and became entrusted with responsibilities for driver training. He cannot however be qualified as an employee of long service. More importantly, for the purposes of considering a substitution of penalty, there are substantial difficulties which militate against his reinstatement. Chief among those is the fact that National Fast Freight and its manager, Mr. Williamson, remain a co-tenant with the Company in its Calgary terminal. It appears that recent efforts by the Company to recover business from National Fast Freight have met with some success, and still more progress in that regard is expected. In light of Mr. Williamson's testimony, it appears to the Arbitrator highly doubtful that those efforts can be expected to progress meaningfully if Mr. Maetche is returned to the workplace.

By any account, the grievor's actions were deserving of a serious degree of discipline. Although Mr. Maetche maintains that he was not aware that Mr. Williamson held a managerial position with the Company's customer, the evidence of Mr. Ronald Forest-Smith, which the Arbitrator accepts as credible, confirms that Mr. Maetche was told by Mr. Forest-Smith some months previous that Mr. Williamson was in charge of National Fast Freight, a customer whose business was valued at in excess of \$30,000.00 per month. In the result, the Arbitrator is met with still further evidence which casts doubt on the candour of the grievor in this matter. For this reason, and for those related above, I am not persuaded that this is an appropriate case for a substitution of penalty.

The grievance must therefore be dismissed.

May 17, 1996

(signed) MICHEL G. PICHER
ARBITRATOR