

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2776

Heard in Montreal, Tuesday, 8 October 1996

concerning

**CANADIAN PACIFIC LIMITED
(ST. LAWRENCE & HUDSON RAILWAY COMPANY)**

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

The dismissal of Yard Service Employee G.J. Luty for the accumulation of demerit marks under the Brown system of discipline.

COUNCIL'S STATEMENT OF ISSUE:

On October 29, 1994, Yard Service Employee G.J. Luty was involved in an altercation with a fellow employee.

Following a fair and impartial investigation, Mr. Luty was assessed 25 demerits for "inappropriate and unacceptable conduct by involving yourself in a physical altercation with a fellow employee and by transmitting unnecessary communication via radio; a violation of CROR General Rules A(ix) and C(i), Safety and Accident Prevention Code (Form 300-2, Rule !(e), and General Operating Instructions, Section 4, Item 1.5 at Toronto Yard."

This assessment, coupled with Mr. Luty's 50 previous demerit marks, resulted in his being dismissed for the accumulation of demerit marks.

The Council requested that the Company compassionately reinstate the grievor without lost wages, but with his seniority intact.

The Company has declined the Council's request.

FOR THE COUNCIL:

(SGD.) D. A. WARREN
GENERAL CHAIRMAN

There appeared on behalf of the Company:

H. B. Butterworth	– Labour Relations Officer, Toronto
H. Morrison	– Manager, Yard Operations, Montreal
G. DeCiccio	– Road Manager, Montreal
P. Chappell	– Manager, Service Planning, Toronto

And on behalf of the Council:

P. Sadik	– Counsel, Montreal
D. A. Warren	– General Chairman, Toronto
K. Williams	– Grievor

AWARD OF THE ARBITRATOR

Upon a review of the evidence the Arbitrator is satisfied that there is substance to the assertion of the Council, to the effect that there was a degree of provocation leading to the altercation between Mr. Luty and another employee. I am satisfied that what occurred was a flare-up, which arose on the heat of the moment, which is clearly uncharacteristic of Mr. Luty's prior comportment as an employee. The grievor has been honest and forthcoming in his account of what transpired, has shown himself to be remorseful and has apologized to the other employee involved in the altercation, an individual who has expressed his willingness to put this incident behind him and to work again with the grievor. While this Office has consistently recognized the gravity of conduct amounting to assault in the workplace (*see, e.g., CROA 1775 and 2422*), it has also recognized that there are mitigating factors which must be considered in determining the ultimate penalty in such a case (*see, e.g., CROA 1688, 1843, 1927, 2018 and 2437*).

On the whole, I am satisfied that there is an equitable alternative to the discharge of the grievor in the case at hand. The substitution of what is tantamount to a two-year suspension, without pay, should, in these circumstances, be sufficient to rehabilitate Mr. Luty, and to convey to him the importance of refraining from any physical contact, or verbal threats, in his future relations with other employees. For these reasons, the grievance is allowed, in part. The Arbitrator directs that Mr. Luty be reinstated into his employment, without compensation for wages and benefits lost, and without loss of seniority.

October 11, 1996

(signed) MICHEL G. PICHER
ARBITRATOR