

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2946

Heard in Calgary, Tuesday, May 12, 1998

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Mr. D. Hunt's appeal of his discharge for a physical confrontation with his supervisor, B. Opar, on Company property, after he had informed his supervisor that he was going home as instructed by Mr. Opar.

EX PARTE STATEMENT OF ISSUE:

On January 6, 1998, Mr. Hunt was discharged as a result of a physical confrontation with his supervisor, B. Opar, that occurred on December 5, 1997. It is the contention of Mr. Hunt that he was harassed and provoked by Mr. Opar and Assistant Supervisor D. Woodbeck, in the preceding 12 months, and that his actions on December 5, 1997 were a direct result of the stress he was under, caused by the constant harassment he was subjected to by his supervisors, Mr. B. Opar and Mr. D. Woodbeck, and the aggressive and unprofessional behaviour of Mr. Opar on December 5, 1997, when he issued an ultimatum to Mr. Hunt to "take the form and get it filled out or go home", as well as Mr. Opar's aggressive behaviour on the morning of December 5, 1997, when he angrily stormed out of his office to confront Mr. Hunt in the employees' locker area, demanding to know what Mr. Hunt had said to him while he was changing out of his work clothes to go home, as he was instructed to do by Mr. Opar.

The Union contends that: **1.)** The grievor, Mr. Hunt, has been unjustly dealt with by the Company, a violation of article 18.6 of agreement 10.1. **2.)** That the assessment of discipline, a discharge, was excessive and unwarranted when all of the circumstances are taken into account. **3.)** That Mr. Opar and his assistant, Mr. Woodbeck, constantly intimidated and abused their supervisory authority against Mr. Hunt. **4.)** That Mr. Opar pursued Mr. Hunt into the locker room, causing the already existing tension between the two to reach a level whereby Mr. Hunt felt he had to take matters into his own hands. **5.)** That Mr. Opar, a supervisor, stepped over the boundaries of supervising employees by harassing and antagonizing Mr. Hunt after he refused to take a form to his Doctor for going home sick after completing a half day's work on December 3, 1997. **6.)** That Mr. Opar failed to act on concerns Mr. Hunt brought to his attention regarding Mr. Hunt's concerns that Mr. Woodbeck, his assistant, was harassing him. **7.)** That Mr. Opar knew or could reasonably be expected to know that his actions towards Mr. Hunt on December 5, 1997, would create an environment of hostility between himself and Mr. Hunt.

The Union requests that Mr. Hunt be reinstated with full seniority and that he be fully compensated for all lost wages and benefits.

The Company denies the Brotherhood's contentions and has declined the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) R. F. LIBERTY

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

S. Blackmore — Labour Relations Officer, Edmonton
J. Torchia — Director, Labour Relations, Edmonton
J. Bauer — Human Resources Business Partners, Great Plains District,
Transportation, Edmonton
J. Dixon — Assistant Manager, Labour Relations, Edmonton
D. Van Cauwenbergh — Labour Relations Officer, Edmonton
R. Opar — Track Supervisor, Winnipeg

And on behalf of the Brotherhood:

R. F. Liberty — System Federation General Chairman, Winnipeg
J. Dutra — General Chairman, Edmonton
D. W. Brown — Sr. Counsel, Ottawa
P. Davidson — Counsel, Ottawa
L. P. Gladish — General Chairman, Secretary/Treasurer, Winnipeg
D. Hunt — Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that the grievor did physically assault his supervisor, Mr. B. Opar, on December 5, 1997. There can be little doubt that, standing alone, the conduct of the grievor would justify the termination of his services. There are, however, mitigating circumstances to be considered.

At the hearing the Brotherhood adduced in evidence material, including a letter from the grievor's physician, confirming that he had been under medical care from October of 1995 through November of 1997 for a serious condition of stress, for which he was prescribed medication. According to the physician, Mr. Glenn N. Morris, the grievor complained to him that he was "... very angry and upset because his supervisor was harassing him at work. He was worried that he might not be able to control his anger if his superior continued to harass him."

The evidence before the Arbitrator also confirms that the grievor sought and obtained assistance from the Company's Employee and Family Assistance Program in the period from June 20, 1997 to November 15, 1997. A further letter was tabled in evidence which also confirms that from May of 1997 the grievor became an active participant in Alcoholics Anonymous.

Mr. Hunt has been employed with the Company for some twenty years. Remarkably, prior to working under the supervision of Mr. Opar, he incurred no discipline whatsoever, prior to October of 1995, when he became involved with an altercation with another employee resulting in the assessment of thirty demerits. He was further assessed fifteen demerits for verbal disrespect to a member of the public in July of 1996.

In support of its claim, the Brotherhood adduced evidence, including letters from other employees, for the purpose of establishing that the grievor's supervisor was particularly disrespectful and provocative towards the grievor, as well as towards other employees. I find it unnecessary to comment upon or draw any conclusions as to those allegations. For the purposes of this grievance it is sufficient to conclude, as I do, that the grievor was suffering from a medical condition of obvious stress, for which he had received medical attention, including prescription medications, during the period immediately prior to the events giving rise to his discharge. It is also noteworthy that he had independently sought and obtained the assistance of the Company's EFAP officers to deal with what he recognized as a mounting problem of stress and anger control. He is currently under ongoing group counselling at the St. Raphael Centre in Winnipeg.

The instant case discloses an employee of some twenty years' exemplary service who, during a brief recent period, behaved in an uncharacteristic manner, culminating in a physical assault upon a supervisor whom he perceives, rightly or wrongly, to have been abusive and harassing towards him. While considerable evidence, some of it conflicting, was addressed to the incident itself, the Arbitrator is satisfied that larger and more profound issues bear on the outcome of this grievance. Significantly, neither the grievor's medical condition, nor his involvement in the Company's EFAP program, was known to his supervisors. Nor were they brought to the Company's attention during the course of the disciplinary investigation prior to his discharge. In these circumstances, having regard to the grievor's medical condition, I am satisfied that the equities justify an order of reinstatement, but on terms which will

sufficiently protect the interests of the Company. I am also satisfied that an order of compensation is not appropriate, given the Company's limited knowledge of Mr. Hunt's personal and medical circumstances.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for wages and benefits lost. As a matter of accommodation, and regardless of seniority provisions if necessary, the grievor's reinstatement should be to a position which will not involve him in direct supervision by Mr. Opar. Further, Mr. Hunt's reinstatement is conditional on his accepting to follow a professional program of counselling for stress and anger control, the terms and duration of the program to be determined by agreement between the parties, and failing agreement to be ordered by the Arbitrator. Should any aspect of the conditions of Mr. Hunt's reinstatement require clarification or further determination, I remain fully seized.

May 19, 1998

(signed) MICHEL G. PICHER
ARBITRATOR