

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3478

Based on the parties' written submissions

concerning

CANPAR TRANSPORT LTD.

and

UNITED STEELWORKERS OF AMERICA (LOCAL 1976)

DISPUTE:

The assessment of 4 demerit marks to D. Britton's discipline record.

JOINT STATEMENT OF ISSUE:

On August 19, 2004 Mr. Britton was notified to attend an investigation in accordance with article 6.1, in connection with threatening Company Officials. On August 25, 2004 Mr. Britton attended an investigation. On August 30, 2004 Mr. Britton was assessed 4 demerit marks.

The Union grieved that the Company could not demonstrate in the investigation that Mr. Britton threatened a Company officer and requested that the discipline should be removed from his record.

The Company declined the grievance.

FOR THE UNION:

(SGD.) N. M. LAPOINTE
PRESIDENT

FOR THE COMPANY:

(SGD.) P. D. MACLEOD
VICE-PRESIDENT, OPERATIONS

AWARD OF THE ARBITRATOR

This arbitration was by a hearing through written submissions only.

Having reviewed the material the Arbitrator is satisfied, beyond any doubt, that on August 19, 2004 a heated verbal altercation took place between the grievor, Mr. Dorel Britton, and his supervisor at the Canpar Queen Quay terminal in Toronto, Mr. Guy Charbonneau.

It appears that the conflict between the two arose in relation to a Safety Committee meeting which Mr. Charbonneau convened in the cafeteria. Mr. Britton made no secret of his view that the cafeteria was an inappropriate location, and apparently made physical gestures to indicate that he was excessively warm in that location during the meeting itself. It is after the meeting that the two men exchanged heated words. Mr. Charbonneau states that at one point the grievor invited him to "take it outside", believing that Mr. Britton was inviting him to fight. No other witnesses overheard those words and the grievor denies having uttered them. It does not appear disputed that Mr. Charbonneau believes to have heard those words and, in a loud voice overheard by others, asked Mr. Britton if he was threatening him.

Upon a review of the statements of all of the witnesses the Arbitrator is not satisfied, on the balance of probabilities, that the Company has established that the

grievor did invite Mr. Charbonneau to fight. Given that the admitted concerns of Mr. Britton related to the location of the meeting in the hot and confined space of the cafeteria, any statement about going “outside” could have more than one interpretation, assuming those words were in fact uttered.

The allegation of a physical threat is serious, and should be supported by evidence commensurate to that charge. Such evidence is not marshalled in the case at hand. That said, however, the Arbitrator cannot accept the submission of the Union that there was no basis for discipline against Mr. Britton. The evidence does establish, on the balance of probabilities, that Mr. Britton did engage in a heated argument with his supervisor, in a manner that was plainly inappropriate. For that he was liable to discipline.

In the circumstances the Arbitrator is satisfied that the substitution of a letter of reprimand to Mr. Britton for the lack of respect which he demonstrated towards Supervisor Charbonneau on August 19, 2004, is appropriate. The demerits assessed against the grievor shall be struck from his record and a letter of reprimand shall be issued in relation to the incident.

April 18, 2005

(signed) MICHEL G. PICHER
ARBITRATOR