

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

CASE NO. 3498

Heard in Edmonton, Tuesday, 12 July 2005

concerning

CANPAR

and

UNITED STEELWORKERS OF AMERICA, LOCAL 1976

DISPUTE:

Twenty-five (25) demerits issued to London employee Mr. Dave McMaster for alleged "physical and verbal abuse" towards a Company official on December 10, 2004. Plus payment for the one and one-half days lost time plus travel and meal expenses incurred while held out of service regarding this matter.

JOINT STATEMENT OF ISSUE:

The Union filed a grievance regarding the above-mentioned matter on December 28, 2004. The Company denied the grievance on January 19, 2005. The parties have been unable to resolve the dispute to date.

The Union contends that on December 28, 2004, Mr McMaster did not verbally or physically abuse a Company official as the Company contends. The Union argues that Mr. McMaster ran into difficulties backing his tractor trailer into the dock because of light reflections on his mirrors making it difficult to see caused by the lights on the building that are normally off.

The Union asserts Mr. McMaster called the supervisor to have someone turn the lights off. The Union further assert when this did not happen Mr. McMaster seeing someone pass the open dock door yelled to them to turn off the lights. The Union admits colourful language was used by Mr. McMaster but asserts it was not directed at the person but rather in reference to the light on the building.

The Union claims the supervisor (who was the person in the doorway) jumped off the dock and aggressively confronted Mr. McMaster. The Union maintains Mr. McMaster touched the supervisor to get his attention only and did not grab or push the supervisor as contended by the Company.

The Union grieved the discipline received as unjust, extreme and without merit and requested the demerits be removed in their entirety. Further, the Union grieved for all wages lost during the time Mr. McMaster was suspended. Further still the Union grieved for all travel and meal expenses incurred due to the suspension and interview held in Toronto.

Company maintains that the discipline would not be reduced nor would payment be made to Mr. McMaster.

FOR THE UNION:

(SGD.) N. M. LAPOINTE
PRESIDENT

FOR THE COMPANY:

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

There appeared on behalf of the Company:

P. D. MacLeod – Vice-President, Operations, Mississauga

And on behalf of the Union:

A. Kane – Regional Vice-President, Vancouver
R. Thompson – Shop Steward, Calgary
D. Bron – Shop Steward, Edmonton

AWARD OF THE ARBITRATOR

Upon a review of the material the Arbitrator is satisfied that the grievor did engage in inappropriate, abusive language in dealing with a supervisor at the Toronto Terminal on the evening of December 10, 2004. It appears that Mr. McMaster addressed Supervisor Ray Sabatin in abusive terms because of lights having been left on in the terminal, causing difficulty in backing his trailer to the dock. While Mr. McMaster denies that he knew that Mr. Sabatin was a supervisor, in the Arbitrator's view little turns on that. It is clear from the material before me that Mr. McMaster started the altercation by using inappropriate language and that when Mr. Sabatin approached him he either grabbed or shoved the supervisor by the shoulder, ultimately being restrained only by the intervention of another supervisor.

The decisions of this Office well establish that there is no place for physical violence or assault within the workplace. In the case at hand the grievor plainly violated that standard and it is only by the intervention of another individual that a more serious physical altercation did not ensue. While the Arbitrator acknowledges that the grievor apologized to Supervisor Sabatin shortly thereafter, and the two shook hands, the incident remains one which the Company is entitled to view as extremely serious. Indeed, the Arbitrator is inclined to consider that the assessment of twenty-five demerits was relatively lenient in the circumstances. Nor does the Arbitrator consider it appropriate to direct the compensation of the grievor for travel in relation to the investigation, absent any reference to a collective agreement provision which would provide it.

For the foregoing reasons the grievance is dismissed.

July 19, 2005

(signed) MICHEL G. PICHER
ARBITRATOR