

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

CASE NO. 3545

Heard in Montreal Tuesday, 11 April 2006

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED STEELWORKERS OF AMERICA (LOCAL 2004)

DISPUTE:

Manjit Lidder – dismissal – as a result of his alleged responsibility for a physical attack on a fellow employee, Mr. Mohinder Johal, on September 18, 2005 at Pembina Hotel, Entwhistle, Alberta.

JOINT STATEMENT OF ISSUE:

The grievor and Mr. Manjit Kooner were at the shared hotel room of fellow CN employees Mr. Mohinder Johal and Mr. Vade Bharwaj on the evening of September 18, 2005. The men became engaged in a heated conversation regarding respect and societal differences between their homeland of India and their new country of Canada. The verbal argument escalated into a physical altercation. The grievor and Mr. Kooner were subsequently charged by the RCMP with "assault" and "uttering threats".

The Company dismissed the grievor on October 11, 2005 after conducting an independent investigation into this matter on October 4, 2005.

The Union filed a grievance at Step 3 pursuant to articles 18.5 and 18.6 of the collective agreement no. 10.1. The Union has grieved that the grievor has be unfairly dealt with, as the discipline is severe, harsh and unwarranted.

The Union requested the Company take into consideration the mitigating circumstances surrounding this incident. The Union further requested the grievor be immediately reinstated with full redress with no loss of pay, benefits or seniority standing.

The Company contends that it conducted a fair and impartial investigation into this matter. The Company further contends that the discipline issued was warranted and that it had not violated the collective agreement.

FOR THE UNION:

(SGD.) A. KANE
STAFF REPRESENTATIVE

FOR THE COMPANY:

(SGD.) D. BRODIE
CN LABOUR RELATIONS

There appeared on behalf of the Company:

- D. Brodie – Manager, Labour Relations, Edmonton
- A. DeMontigny – Sr. Manager, Labour Relations, Montreal
- M. Johal – Witness
- V. Bhardwaj – Witness

And on behalf of the Union:

- A. Kane – Staff Representative, Vancouver
- J. Dinnery – President, Winnipeg
- K. Hundal – Local Shop Steward
- M. Kooner – Witness
- M. Lidder – Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms, beyond controversy, that a heated altercation took place in the room occupied by Assistant Extra Gang Foremen Mohinder Johal and Vade Bhardwaj at a hotel in Entwistle, Alberta on the evening of September 18, 2005.

At approximately 21:30 the grievor and fellow employee Manjit Kooner went to that location from their own accommodations in Evansburg, Alberta to meet with the two employees in question. It emerges from the evidence before the Arbitrator that the grievor and Mr. Kooner went to the room of the assistant foremen, who are employees in the bargaining unit, to object to the lack of respect demonstrated to them by Mr. Johal in his manner of giving and supervising assignments. It appears that Mr. Johal and Mr. Lidder are from different castes in India, and that during their conversation in Mr. Johal's room, among other things, Mr. Lidder indicated to him that in Canada he must give him the respect of an equal.

There is substantial dispute as to what transpired as regards the sequence of events in the room. Without examining closely each of the details which emerged from the investigation process, it does not appear disputed that when the grievor and Mr. Kooner arrived at Mr. Johal's room the two assistant foremen were then seated at a table having dinner, and invited their two fellow employees to join them. They declined, and while seated in the room continued in conversation with the two assistant foremen. The Arbitrator is satisfied that the gist of the conversation became a relatively heated exchange between Mr. Lidder and Mr. Johal concerning the latter's manner of exercising authority in the functions of an assistant extra gang foreman. The verbal argument escalated to a physical clash between Mr. Lidder and Mr. Johal. Each accuses the other of having made the first physical gesture. I am satisfied, on the balance of probabilities, that Mr. Lidder was the initial aggressor.

The account of Mr. Johal and Mr. Bhardwaj is to the effect that when Mr. Johal responded to the first attempt by Mr. Lidder to strike him by asking Mr. Kooner for his help and asking him why he would have brought Mr. Lidder there to fight with him, Mr. Kooner then took one or two punches at Mr. Johal as well. Mr. Kooner's account is to the effect that he merely stood up to attempt to break up the fight. Mr. Bhardwaj's account would support the view that the two principal participants were Mr. Lidder and Mr. Johal, although he also indicates that Mr. Kooner did strike out at Mr. Johal as well. In the result, Mr. Johal suffered swelling to the side of his face and a scratch to the inside of his ear which resulted in bleeding. The following day he received medical attention for those injuries. It is also evident that Mr. Lidder suffered a black eye.

If the evidence of the grievor and Mr. Kooner is to be believed, they left their hotel and travelled to an adjoining town to meet with the two assistant extra gang foremen to discuss with them the lack of respect which they felt they were receiving in the workplace. If their view is accepted, what resulted was a heated argument which led to a physical attack upon Mr. Lidder by Mr. Johal. If the account of the two assistant extra gang foremen is to be believed, the grievor and Mr. Kooner came to their hotel room, were invited to join them for dinner and, after some heated conversation about respect, Mr. Johal was set upon by Mr. Lidder, with Mr. Kooner joining in to a lesser degree thereafter.

On a careful review of the evidence, and of each of the statements presented, the Arbitrator is left in substantial doubt with respect to the account of these events put forward on behalf of the grievor. There is no record of any prior social relationship between Mr. Lidder and Mr. Johal, other than contact on the job. It is less than clear to the Arbitrator that Mr. Lidder and Mr. Kooner went to the extent of going to the room of the assistant foremen simply to socialize. On the contrary, by the admission of the grievor and Mr. Kooner, it appears beyond doubt that they went there to deal with the issue of what they felt was a lack of respect towards them on the part of Mr. Johal. Even accepting that they went without an express intention of assaulting Mr. Johal, they obviously went in the expectation of dealing with him in some reasonably significant fashion.

On balance, I am satisfied that their anger towards Mr. Johal is what provoked the fight which ensued, and that in fact Mr. Lidder was the initial aggressor. I am also

satisfied that Mr. Kooner did participate, albeit to a lesser extent, in an attempt to rain one or two punches on Mr. Johal as well, before the fracas was eventually broken up, largely by Mr. Bhardwaj. I also accept the evidence of both assistant foremen to the effect that upon leaving the room the grievor and Mr. Kooner uttered remarks to the effect that there would be more trouble for the two assistant foremen if they should report the incident which occurred.

As well recorded in prior decisions of this Office, it is clear that serious work-related altercations, even if they should take place after hours and off working premises, can justify discharge. (See, e.g., **CROA 1701** and **2175**.) In the case at hand Mr. Lidder went to the hotel room of a fellow employee who had a degree of authority over him in his capacity as assistant extra gang foreman. He clearly went with the intent of correcting that individual's perceived failure to give him proper respect. The conditions for a possible altercation were obvious. In fact, when a heated discussion ensued, as noted above, Mr. Lidder became the initial aggressor, subsequently aided to some degree by Mr. Kooner. I am satisfied, on the balance of probabilities, that the actions of the grievor made him deserving of an extremely serious form of discipline, and that discharge was within the range of appropriate responses, given the motivation for the fight which occurred and the defiance of authority which it involved.

Are there any mitigating factors to be taken into account? The grievor has relatively long service, having commenced employment in 1981. He apparently submitted a written apology to the Company, but only after the exhaustion of certain criminal proceedings following charges of assault brought against him. There was no

attempt on the grievor's part to offer any apology at any time prior to the Company's decision to terminate his services. Nor does Mr. Lidder's disciplinary record assist greatly. While he was not the subject of extensive discipline over the years of his service, on May 9, 1993 he was assessed twenty-five demerits for uttering threats to a fellow employee. The connection between that incident and the kind of conduct which is the subject of this grievance is unfortunately obvious. It becomes highly questionable whether the grievor truly learned from the prior discipline that there is no room in the workplace for physical assault or threats of physical assault towards other employees or supervisors.

In the result, the Arbitrator is not persuaded that this is an appropriate case for a substitution of penalty. The grievance must therefore be dismissed.

April 20, 2006

(signed) MICHEL G. PICHER
ARBITRATOR