

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

**CASE NO. 3546**

Heard in Montreal Tuesday, 11 April 2006

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**UNITED STEELWORKERS OF AMERICA (LOCAL 2004)**

**DISPUTE:**

Manjit Kooner – 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 Lidder 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. Lidder 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. Lidder – Witness
- M. Kooner – Grievor

### **AWARD OF THE ARBITRATOR**

The facts relative to this grievance are largely described in **CROA&DR 3545**, heard concurrently with this case. The sole issue is the measure of discipline which is appropriate given the conduct of Mr. Kooner, regard being had to all relevant factors. As is apparent from the account of events related in **CROA&DR 3545**, Mr. Kooner was not the primary aggressor in the fight which occurred in the room of two assistant foremen on the evening of September 18, 2005. The Arbitrator is satisfied that a heated argument which occurred on that occasion was chiefly between Employee M. Lidder and Assistant Foreman Mohinder Johal. I am satisfied that when the fisticuffs began between those two individuals Mr. Kooner had no role in provoking the fight. I am equally satisfied, however, that he did attempt to strike Mr. Johal, apparently in support of his friend Mr. Lidder. It would also appear from the material before me, however, that Mr. Kooner did have some role in attempting to break up the fight after his initial involvement.

I am satisfied that there are mitigating factors to be taken into account. Firstly, as noted above, Mr. Kooner was not the initial aggressor in the melée which occurred. Secondly, he did eventually attempt to restrain the primary aggressor, Mr. Lidder. Thirdly, the following morning he offered an apology to Mr. Johal for what had occurred. Additionally, Mr. Kooner is an employee of twenty-one years of service, who is forty years of age. During his employment he has had very little discipline, having received ten demerits on two occasions and one written reprimand. Before the incident giving rise to his discharge in October of 2005, he had received no discipline for a period in excess of twelve years, and has no record of violence or threats to others in the workplace.

On the whole, the Arbitrator is satisfied that the assessment of a serious level of discipline short of permanent discharge would have a sufficiently rehabilitative effect on Mr. Kooner, bearing in mind that he has no prior record of threats or physical altercations. In the result, therefore, the grievance is allowed, in part. The Arbitrator directs that Mr. Kooner be reinstated into his employment forthwith, but with no compensation for wages and benefits lost.

April 20, 2006

**(signed) MICHEL G. PICHER**  
ARBITRATOR