

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4070**

Heard in Montreal, Thursday, 15 December 2011

Concerning

BOMBARDIER TRANSPORTATION CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The termination of probationary employee S. Ricketts.

JOINT STATEMENT OF ISSUE:

On February 25, 2011, the grievor, S. Ricketts was alleged to have been involved in an altercation with a fellow employee while at work.

Following an investigation and statement held on July 8, 2011, the Company issued a letter of dismissal which terminated his employment during his probationary period.

The Union appealed the dismissal as excessive and requested the Company reinstate the employee without loss of wages or benefits.

The Company declined the Union's request.

**FOR THE UNION:
(SGD.) G. MACPHERSON
GENERAL CHAIRMAN**

**FOR THE COMPANY:
(SGD.) D. MACHELL
GENERAL MANAGER**

There appeared on behalf of the Company:

M. Horvat	– Counsel, Toronto
A. Brown	– Manager, Human Resources, Toronto
D. Machell	– General Manager, Toronto
S. Seth	– Supervisor, Human Resources, Toronto

There appeared on behalf of the Union:

D. Ellickson – Counsel, Toronto
G. MacPherson – General Chairman, Toronto

AWARD OF THE ARBITRATOR

Upon a review of the evidence the Arbitrator is satisfied that the position of the Company is correct as regards the facts of the incident which led to the discharge of the grievor. I am satisfied that the grievor did physically push fellow employee Dino DePietro while both were working on train 865 on the morning of February 25, 2011.

According to the account of events by Mr. DePietro, which I accept as being credible, he was assigned to work with Mr. Ricketts on train 865, the latter being the QCTO. As he entered the cab car the grievor was seated facing a passenger and engaged in conversation with her. When the grievor began to speak with the passenger the grievor told him that he should go and do his job, and pushed Mr. DePietro at the hips, shoving him into the cab car area. When Mr. DePietro objected to the grievor having touched him, warning that he should never do so again, Mr. Ricketts responded to the effect of: "What are you going to do about it?" while standing and facing Mr. DePietro at a close distance. The grievor then indicated that he was going to close a door so that he did not have to see Mr. DePietro's face, and then slammed the cab door in such a way that it struck Mr. DePietro's right leg before it was fully closed.

I consider it significant that when Mr. Ricketts was met by Human Resources Supervisor Joanne Nicculae and General Manager of Operations Don Mitchell following

the complaint registered by Mr. DePietro on the same day, he did not dispute having engaged in physical contact with Mr. DePietro. As reported by Mr. Mitchell:

Mr. Ricketts admitted that he did move Mr. DePietro out of the way because he came between him and a passenger while having a conversation with this passenger in the cab car.

It also appears that in the same exchange Mr. Ricketts admitted "... that he had issues with Mr. DePietro." and that they did not get along well.

While Mr. Ricketts is a railway employee of long service, he was a relatively new hire with the instant Company. At the time of the incident here under consideration he was a probationary employee. It is not disputed that the standard of just cause with respect to the employment of probationer is of a lesser degree than for a permanent employee. That is expressly recognized in article 10.2 of the instant collective agreement which provides as follows:

10.2 It is understood and agreed the dismissal of a probationary employee is a decision of the Company. However such dismissal of a probationary employee shall be for just cause understanding that the standard for cause relating to a probationary employee is lower than that of a non-probationary employee.

Physical aggression and the threat of physical aggression towards another employee is among the most serious forms of misconduct in any employment setting. Even with respect to the treatment of a permanent employee, engaging in a physical altercation or threatening a fellow employee has been found by this Office to amply justify termination (see, e.g., **CROA 1701**). It is also well recognized by this Office that the standard of just cause to be met by an employer with respect to the termination of a

probationary employee is lower than would apply to a permanent employee (see **CROA 1931, 2004** and **2342**).

When the facts of the instant case are examined closely, I find it extremely difficult to question the decision taken by the Company. Whatever Mr. Ricketts' feelings may have been in regard to Mr. DePietro, nothing justified him laying hands upon his fellow employee and pushing him out of the way, as he did. Nor was he entitled to respond in a threatening way when Mr. DePietro verbally objected to being shoved by Mr. Ricketts. Additionally, an aggravating factor in the case at hand is the apparent reversal of story by Mr. Ricketts. While he first admitted to having touched Mr. DePietro, as reported in Mr. Mitchell's narrative, at the time of the investigation he denied any such physical contact. Contrary to the account of Mr. DePietro, an account corroborated by the customer who witnessed the event, during his disciplinary investigation Mr. Ricketts denied having touched Mr. DePietro, and suggested that in fact Mr. DePietro deliberately moved into contact with his hand and arm, and then protested that he should not touch him. I find that assertion to be entirely lacking in credibility.

When the whole of the record is reviewed, I am satisfied that the Company did have cause to discipline Mr. Ricketts, that his actions involved a form of physical aggression against another employee and that, given his then status as probationary employee and his lack of candour, it was not inappropriate to terminate his services. In my view that judgement should not be disturbed.

For the foregoing reasons the grievance is dismissed.

December 19, 2011

(signed) MICHEL G. PICHER
ARBITRATOR