

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

**CASE NO. 4711**

Heard in Calgary, November 14, 2019

Concerning

**CANADIAN NATIONAL RAILWAY**

And

**UNITED STEELWORKERS LOCAL 2004**

**DISPUTE:**

On May 06, 2019 the Company discharged Alaa Ibraheem for "Violation of CN Harassment-Free Environment and CN Policy on Workplace Violence Prevention Policy on March 9<sup>th</sup>, 2019".

**THE UNION'S EXPARTE STATEMENT OF ISSUE:**

The Union filed an appeal arguing the discharge was not fair or impartial as it lacked any evidence to justify the discharge.

In the alternative the Union argues the discharge was not progressive and consequently was excessive.

The Company has not responded to date.

The Union requests the Company to reinstate the Grievor and compensate for all lost benefits, pension and wages with full redress.

**FOR THE UNION:**  
**(SGD.) J. Desjardins**  
Regional Chief Steward

**FOR THE COMPANY:**  
**(SGD.)**

There appeared on behalf of the Company:

F. Daignault	– Manager, Labour Relations, Montreal
S. Blackmore	– Senior Manager Labour Relations, Edmonton
J. Mathers	– Senior Manager, Engineering, Surrey
A. Campbell	– Assistant Supervisor Track, Surrey

And on behalf of the Union:

T. Lundblad	– Staff Representative, Toronto
J. Desjardins	– Chief Steward, Wilkie
A. Ibraheem	– Grievor, Surrey

## AWARD OF THE ARBITRATOR

The grievor was employed as a Permanent Machine Operator (“PMO”) working out of Vancouver, B.C. PMO’s operate and service track work machines. In the grievor’s case, his primary responsibility was a speed swing machine. He had six years of service at the time of his termination on May 6, 2019.

On March 9, 2019 the grievor was involved in a confrontation with a fellow employee, Gurpreet Kaleka. The altercation was witnessed by several employees in the PMO room. Mr. Kaleka maintained that the verbal confrontation, and subsequent harassment, was initiated by the grievor because the grievor wanted to have the keys to CN truck 403 that Mr. Kaleka had in his possession at the time. The grievor claimed that he had asked Mr. Kaleka for the keys to truck 403 because the radio in his own truck was not working. Mr. Kaleka refused to give the grievor the keys to truck 403 and an argument ensued.

During the course of the incident, Mr. Kaleka claimed that he was verbally attacked and physically assaulted by the grievor. His complaint against the grievor reads in part as follows:

In the morning when i entered the PMO room Alaa start abusing and commenting me there he said all of you east indians taking overtime. But this is totally racism to commenting some ones community. Then in the job briefing room Alaa start aruging with me about truck 249 and asking the keys 403 truck. But 249 truck was fully equipped with all the stuffs he needed for the job and that truck being used everyday for flagging instead he was asking for the truck 403 the one I was using, then he start shouting on me and attacked me physically, he throw the coffee cup on me start pushing me and hold me from throat and neck and made me almost chocked but all that time I stayed

calm and trying to move myself out of the situation and start walking outside but he was still following the in uncontrolled and wild manner trying to get me indulged into the fight then i called Aaron Campbell because I was so scared at that time from his hyperness. When Aaron Campbell met us in the parking lot and he was still yelling on me in front of Campbell and calling me piece of shit. Aaron Campbell warned him but he didn't stop. Pedro was beside us at the time this is totally case of violence. When i was talking to Aaron Campbell, Alaa made an excuse that radio doesn't work in 249 truck but we checked the truck after and radio was working in 249 truck he is totally lying about radio, he purposefully did this.

Following the incident, the grievor requested a leave of absence due to personal matters. He completed an absence request form that day and brought it to the attention of CN Supervisor Aaron Campbell. He then left the workplace.

There were four witnesses to the incident, all of whom were interviewed on April 15, 2019 as part of the Company's investigation. The following is a summary of their statements:

-Track Maintainer Ryan Chand stated that he attended the job briefing and saw the grievor ask Mr. Kaleka for the keys to truck 403 and that Mr. Kaleka refused to turn them over. An argument then started over the keys. Mr. Chand then observed the grievor and Mr. Kaleka make their way into the hallway where they continued to argue back and forth. Mr. Chand then went outside to the parking lot on the west side of the building where he could see where truck 403 was parked. Mr. Chand noted that the two individuals continued to argue as they stood on opposite sides of the truck.

-Track Maintainer Joao Lopes was also at the job briefing and saw the grievor and Mr. Kaleka arguing about the truck keys, but left shortly afterwards to clean the TFO truck.

-Track Maintainer Pedro Antunes was also at the job briefing and witnessed the argument between the grievor and Mr. Kaleka. He observed both men leave the job briefing room and noted "...Alaa threw his coffee in Gurpreet's direction but it hit the stove. Gurpreet was walking away and Alaa followed him and

continually pushing him. They then turned into the hallway and I lost sight of them.”

-Track Maintainer/Truck Driver Ronald Prasad also witnessed the confrontation. He described what he observed as follows:

9. Q: Please describe in your own words, the circumstances leading up to the incident on March 9, 2019.

A: On March 9, 2019 I witnessed a confrontation between Alaa and Gurpreet. It was over the use of a pickup truck. Gurpreet had the keys and Alaa wanted them. In the briefing room Alaa got in Gurpreet's face, swearing at him about giving the keys to him. Gurpreet at that point told him to back off and to not touch him and if he had a problem to call a Supervisor. Gurpreet left the briefing room and headed outside to the bay area. Alaa Chased. Outside the briefing room Alaa threw his coffee at the stove in the kitchen then caught up to Gurpreet in the hallway. He was swearing and threatening to hit him, then pushed Gurpreet with both hands against the wall. After that Gurpreet said he was going to call the supervisor and Alaa left.

A formal investigation into the incident was held on April 9, 2019. The grievor elected to proceed without an accredited union representative. The grievor was then presented with information in relation to the incident but stated he did not need to review it:

6. Q: You are now provided with the following information which is entered as evidence that may have a bearing on your responsibility in connection with the matter under investigation:

A. Yes

7. Q: Have you had sufficient time to review the evidence?

A. No need to review it.

The grievor then read into the record at his investigation a statement which was identical to an earlier email response he had provided to the Company after receiving the Notice to Appear on April 3, 2019. It reads in part:

I repeatedly asked him for the keys and we started raising our voice at each other arguing. We left the room and he said I'm going to call Aaron and let him decide who gets the truck. I said sure great please call him, Aaron will just tell you to give me the truck and stop wasting his time. Aaron showed up about 20 minutes later and we told him what happened. Sure enough Aaron just told the employee to give me the keys and quit being babies because I needed the truck for my duties and he did not & to get to work.

He gave me the keys I started warming up the truck and loading the tools. I felt very stressed out in the whole situation, especially since I had recently been dealing with recent personal issues...

The Union submits that the grievor was not provided with a fair and impartial investigation pursuant to the requirements of article 18.2 of the collective agreement. As noted in **CROA 2073**, the requirement for a fair and impartial investigation is "*...not intended to elevate the investigation process to the formality of a full-blown civil trial or an arbitration*".

The grievor in my view was properly asked if he desired an accredited representative and he declined. In addition, the grievor refused the Company's invitation to review the evidence before answering any questions. In doing so, he passed up on the opportunity to review the allegations against him and the content of the evidence. He was also offered at the conclusion of his interview the opportunity to ask questions for the record through the Presiding Officer. The grievor again declined to do so.

The investigation, as noted in **SHP 371**, was the grievor's opportunity "*...to make a full answer and explanation*". The grievor decided instead to just read from a prepared text and attend the investigation without the assistance of his Union representative. The record of his statement shows an arrogant and defiant attitude towards the whole process.

It is simply too late in the day for the grievor to now turn around and claim he was dealt with unfairly at his investigation. There is no evidentiary basis to find a breach of article 18.2.

Overall, I accept the evidence of Mr. Kaleka to be true, particularly given the corroboration of the independent witnesses who viewed the incident. I find that the grievor downplayed his involvement, as evidenced in the statement he read into the record at the investigation. There was much more to this incident than his description about an encounter over the keys having to be rectified by the Supervisor, Aaron Campbell.

In my view, after a close review of the evidence, I find that the grievor entered into a verbal dispute with Mr. Kaleka. He threw a cup of coffee in his direction as they passed through the kitchen that missed him and hit the stove. The grievor then grabbed and held Mr. Kaleka up against the wall in the hallway. It was at that point that the grievor grabbed Mr. Kaleka in a choke hold around his throat and neck. I also accept the uncontradicted evidence of Mr. Kaleka that he was subjected to a racial slur by the grievor before the morning briefing. That kind of remark is inexcusable anywhere, including a busy workplace where employees from all parts of the world work shoulder-to-shoulder every day.

All of these actions violated the Company's *Harassment-Free and Violence Prevention* policies, policies which the grievor would have been fully acquainted with at the time of the incident. The facts of this case are similar to **CROA&DR 4517** where

Arbitrator Clarke dealt with a track maintainer who was discharged for assaulting his foreman. In that case, Arbitrator Clarke cites **CROA&DR 4070** where the arbitrator noted that “...*physical aggression and the threat of physical aggression towards another employee is among the most serious form of misconduct in any employment setting.*” Arbitrator Clarke went on to dismiss the grievance, concluding as follows (*translated from French*):

[21] Rather than admit responsibility, Mr. Fontaine seems to claim that Mr. Lauriault was in some way responsible for the events of December 14. The facts in the file do not support this contention. His lack of remorse cannot lead the arbitrator to conclude that similar incidents will not be repeated in the future if Mr. Fontaine were reinstated to his position.

The grievor is not a long-term employee. He has six years of service. Although the Company does subscribe to a policy of progressive discipline, this is not a case where the arbitrator is persuaded that a lesser penalty should be substituted for the grievor's termination. The grievor was not honest about the events of March 9, 2019. His lack of candidness over the incident and aggressive behaviour towards a fellow employee, coupled with his racial insults, undermines his ability to be a trusted employee in the future.

For all the above reasons, the grievance is dismissed.

December 5, 2019



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**JOHN MOREAU  
ARBITRATOR**