CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 667

Heard at Montreal, Tuesday, September 12,1978

Concerning

BRlTISH COLUMBlA RAlLWAY

and

UNITED TRANSPORTATlON UNION (T)

DlSPUTE:

Thirty (30) demerit marks assessed the discipline record of Yardman A.R. Chardon for his alleged act of insubordination on January 19, l978.

JOlNT STATEMENT OF lSSUE:

On January 19, 1978 a scuffle occurred between Yard Foreman P. N. Wheeldon and his Helper, Yardman A.R. Chardon.

Yardman A.R. Chardon was withheld from service and a hearing was held on January 20, l978. As a result of this hearing, the discipline record of A.R. Chardon was assessed thirty (30) demerit marks for his alleged act of insubordination.

Yardman A.R. Chardon was returned to service on January 27,1978.

The Union has requested that the disciIline assessed the record of Yardman A.R. Chardon for his alleged act of insubordination be removed and that he be compensated for wages lost while held from service.

The Railway has declined the Union request.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) G.C.W. BOWLES	(SGD.) T. TEICHMAN
GENERAL CHAIRMAN	MANAGER-LABOUR RELATIONS

There appeared on behalf of the Company:

H. Collins, Supervisor, Labour Relations, B.C. Rly., Vancouver
B. M. McIntosh, Labour Relations Assistant, B.C. Rly., Vancouver

And on behalf of the Brotherhood:

G.C.W. Bowles, General Chairman, U.T.U.(T) - Vancouver
R. T. O'Brien, Vice President, U.T.U., Richmond, B.C.

AWARD OF THE ARBlTRATOR

There is no doubt that the grievor was in fact involved in a "scuffle" with his Yard Foreman on the occasion in question. The stories relating to the incident differ as to who struck the first blow, and as to the manner in which the dispute arose. They do not permit any clear attribution of responsibility one way or the other.

While an unprovoked attach on a foreman, or indeed on any employee is serious matter obviously calling for severe discipline, an attack which may be said to have provoked is a different matter and a blow struck in self-defence may not be a matter for discipline at all. Even where it may not be clear, however, who is attacked and who the attacker, mere participation in a fight may be a ground for discipline. A person who strikes a necessary blow in self-defence, in order to avoid a fight or to avoid its continuance may, in some circumstances, not be subject to any discipline.

In the instant case the grievor did participate in a fight. He says that he struck in self-defence, and it cannot be clearly determined whether that is true or not. Even assuming, however, that the grievor's account of the matter is true to that extent, the fact is that he dealt a series of blows to the foreman, causing him to seek medical aid and resulting in his being off work for some two weeks. That is not self-defence, it is (at best) retaliation. It was clearly improper conduct, and in my view the grievor was properly subject to discipline. ln my view an assessment of thirty demerits was not excessive in the circumstances.

The Company held the grievor out of service pending investigation, but did not hold the foreman out of service. That is not necessarily a sign of improper discrimination, if only because the foreman was then off work because of his injuries. The hearing of the grievor was conducted by the foreman's brother: this was, I think, unfortunate, but does not in itself vitiate the proceedings. The hearing itself was not improper. The foreman himself did, plainly, suffer as a result of this incident, and the difference in treatment of the two cases does not establish any improper discrimination in the circumstances of this case.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL
ARBITRATOR