

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1775

Heard at Montreal, Thursday, 14 April 1988

Concerning

VIA RAIL CANADA INC.

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

The assessment of thirty demerit marks to the record of G. Johnston for using threatening words and physical aggression to a fellow employee.

JOINT STATEMENT OF ISSUE:

On February 12, 1987, a fellow employee reported that the grievor grabbed him by his shirt collar, held him against the wall by force, and among other things, told him, "Painchaud, si je perd ma job, tu n'aurais pas le temp de te rendre ta pension."

Following an investigation on February 17, 1987, the grievor's record was assessed thirty demerit marks for using threatening remarks and physical aggression to a fellow employee. The Brotherhood contends that the Corporation accepted the complainant's statement as accurate without questioning another witness to the incident. Therefore, the discipline should be removed, and Mr. Johnston be compensated for any loss of salary or benefits as a result.

The Corporation has denied the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD) TOM McGRATH
National Vice-President

FOR THE CORPORATION:

(SGD) A.D. ANDREW
Director, Labour Relations

There appeared on behalf of the Corporation:

| | |
|--------------|---|
| C. O. White | - Labour Relations Officer, Montreal |
| M. St. Jules | - Manager Labour Relations, Montreal |
| J. Kish | - Officer, Personnel and Labour Relations Montreal |
| A. Painchaud | - Witness, Montreal |
| M. McCormick | - Observer, Montreal |

And on behalf of the Brotherhood:

| | |
|--------------|-------------------------------------|
| R. Emard | - Local Chairman, Montreal |
| G. Cote | - Regional Vice-President, Montreal |
| T. McGrath | - National Vice-President, Ottawa |
| F. Bison | - Local Chairman, Montreal |
| A. Martineau | - Witness, Montreal |
| G. Johnston | - Grievor |

AWARD OF THE ARBITRATOR

Employee Andre Painchaud was involved in an incident on January 29, 1987 respecting the grievor, Mr. Gary Johnston. At that time Mr. Painchaud was instrumental in an investigation which led to an allegation that Mr. Johnston had misappropriated Corporation funds by the sale of baggage coupons. As a result of Mr. Painchaud's investigation, which came to involve other employees and members of management, the grievor was notified to appear for a disciplinary investigation scheduled for February 11, 1987.

The evidence of Mr. Painchaud is that the following day, during a lunch break, he was accosted in the lunch room by Mr. Johnston who grabbed him by the shirt collar and forced him against the wall and stated: "Painchaud, if I lose my job, you'll never make it to your pension." Although during a subsequent investigation Mr. Johnston maintained that the incident was a fabrication of Mr. Painchaud, he gave no evidence whatever at the hearing of this grievance. The only other employee present in the lunch room at the time of the incident, Mr. Alain Martineau, did testify. His evidence essentially corroborates Mr. Painchaud's account of what transpired. The only sworn evidence before the Arbitrator, therefore, supports the Corporation's position as to what happened. For these reasons the Arbitrator must conclude that the Corporation has discharged the burden of establishing that the grievor both physically assaulted and verbally threatened Mr. Painchaud, as alleged.

The seriousness of the grievor's conduct is obvious. Physical abuse and threats to the security of a fellow employee or supervisor are plainly unacceptable in any workplace, and may justify the most serious of disciplinary consequences. That is well established in the prior jurisprudence of this Office (see e.g. C.R.O.A. No. 1701 and 1722). In the circumstances of this case the grievor was plainly deserving of discipline.

The Arbitrator can find no substance in the assertion of the Brotherhood that the Corporation acted unfairly because it failed to question Mr. Martineau as part of the investigation of Mr. Johnston's actions. The record establishes that indeed the Corporation did approach Mr. Martineau for his account of what happened. It is not disputed that at that time Mr. Martineau said nothing, except that he refused to get involved in a dispute between two fellow workers. Faced with that response from Mr. Martineau, who described what he saw only when subsequently subpoenaed before the Arbitrator, the Corporation cannot be faulted for the way it proceeded.

The grievor's record suggests that in more recent years he has

demonstrated an ability to be a good employee who can remain free of discipline for substantial periods of time. This incident, however, raises serious questions which would, in the event of similar conduct in the future, justify the most serious disciplinary consequences.

For the reasons related above, the Arbitrator concludes that the imposition of thirty demerits was within the appropriate range of discipline. The grievance is therefore dismissed.

April 15, 1988

(SGD) MICHEL G. PICHER
ARBITRATOR