

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1791

Heard at Montreal, Tuesday, 14 June 1988

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

COMPANY:

Appeal of the discharge of Mr. E. Morgan, Toronto, for conduct unbecoming an employee while employed in the Crew Management Centre.

BROTHERHOOD:

Appeal of the discharge of Mr. E. Morgan, Toronto, for alleged conduct unbecoming an employee while employed in the Crew Management Centre.

COMPANY STATEMENT OF ISSUE:

On October 16 and 17, 1987, the Company received written complaints from two female employees concerning the behaviour of Mr. E. Morgan.

An investigation into the facts surrounding these complaints was conducted. During this investigation, the Company determined that the grievor had engaged in both physical and verbal sexual harassment against the two female employees.

As a result of the investigations on October 22, 1987, Mr. E. Morgan was discharged.

The Brotherhood has grieved the dismissal on the grounds that the incidents did not take place, rather the grievor is the victim of a conspiracy. Further that there is a lack of evidence to support the charges. The Brotherhood requests the grievor be reinstated to his position and fully compensated for all lost wages, including interest, overtime and benefits.

The Company disagrees with the Brotherhood's contention and has declined the appeal of discharge.

BROTHERHOOD STATEMENT OF ISSUE:

Mr. Morgan was discharged by CN Rail on October 22nd, 1987. The Company alleged that Mr. Morgan had, earlier in October, sexually

harassed two female employees who were co-workers with Mr. Morgan in the Crew Management Centre.

The Brotherhood has grieved the dismissal on the grounds that no behaviour that could be construed as sexual harassment occurred as alleged.

The Brotherhood requests that the grievor be reinstated to his position in the Crew Management Centre and be made whole for all losses, including interest, overtime and benefits.

FOR THE BROTHERHOOD:

(SGD) TOM McGRATH
National Vice-President

FOR THE COMPANY:

(SGD) W. W. WILSON
for: Assistant Vice-President
Labour Relations

There appeared on behalf of the Company:

J. Luciani	- Counsel
W. W. Wilson	- Director, Labour Relations, Montreal
G. Wheatley	- Manager, Labour Relations, Montreal
M. M. Boyle	- Labour Relations Officer, Montreal
S. F. McConnville	- Labour Relations Officer, Montreal
B. Boucher	- Transportation Officer, Operations Toronto
B. Hogan	- Manager, Crew Management Centre, Toronto
M. Cachia	- Supervisor, Crew Management Centre Toronto
R. Hafeez	- Supervisor, Crew Management Centre Toronto
S. P. Burt	- Witness
L. A. Peldiak	- Witness

And on behalf of the Brotherhood:

M. Lynk	- Counsel, Executive Assistant, CBRT&GW
T. N. Stol	- Regional Vice-President, Toronto
R. Storness-Bliss	- Regional Vice-President, Vancouver
R. Gee	- Staff Representative
G. Johnston	- Witness
B. Fitzgerald	- Witness
S. Baker	- Witness
R. Jones	- Witness
C. Roach	- Observer
E. Morgan	- Grievor

On Monday, 11 July 1988:

There appeared on behalf of the Company:

J. Luciani	- Counsel
M. M. Boyle	- Labour Relations Officer, Montreal
S. F. McConnville	- Labour Relations Officer, Montreal
B. Boucher	- Transportation Officer Operations, Toronto
B. Hogan	- Manager, Crew Management Centre, Toronto
R. Hafeez	- Supervisor, Crew Management Centre Toronto
J. Powell	- Witness
B. Sims	- Witness

S. P. Burt - Witness
L. A. Peldiak - Witness

And on behalf of the Brotherhood:

M. Lynk - Counsel, Executive Assistant, CBRT&GW
T. N. Stol - Regional Vice-President, Toronto
R. Gee - Staff Representative, Toronto
G. Johnston - Witness
B. Fitzgerald - Witness
S. Baker - Witness
R. Jones - Witness
C. Roach - Observer
E. Morgan - Grievor

AWARD OF THE ARBITRATOR

Mr. Edwin Morgan grieves his discharge by the Company for alleged acts of sexual harassment. Mr. Morgan, who is married and is 36 years old, was employed as a crew dispatcher in the Crew Management Centre located in Union Station in Toronto. He has some 13 years' seniority, having first entered the service of the Company on February 5, 1974. The Union asserts that the allegations of sexual harassment made against Mr. Morgan are without foundation, and it seeks his reinstatement with full wages and benefits. The Company maintains that the grievor's conduct in respect of two female co-workers, from within the same bargaining unit, constitutes serious sexual harassment. It submits that the discharge of the grievor was appropriate in the circumstances.

I THE EVIDENCE

The complaint of sexual harassment made against Mr. Morgan was brought by two young and relatively new employees, Ms. Susan Burt and Ms. Lisa Peldiak. The evidence establishes that Ms. Burt's brother, Stephen Burt, is employed within the Crew Management Centre. At his suggestion, both Ms. Burt and Ms. Peldiak applied successfully for job openings in the Company's crew dispatching centre at Union Station. Both commenced employment in July of 1987. It is common ground that historically the Crew Management Centre has been predominantly staffed by male dispatchers. The Centre, which operates on a three shift, 24-hour-a-day basis, is responsible for assembling and notifying train crews from among available running trades employees, in accordance with Company policy and the rights of the employees established within their respective collective agreements.

The Crew Management Centre is a relatively small open office containing some ten desks, each of which is equipped with a telephone and a computer and video display terminal. Each desk corresponds to a certain railroading area, such as Belleville or Hornepayne. Using the information available through the computer the crew dispatcher contacts available crew members to assemble teams of employees responsible for the operation of trains within a designated geographic area. It is common ground that this can, at times, be a hectic and intense experience, particularly when employees take issue

with the order of their assignment and the dispatcher's interpretation of their right to be called to work in a particular circumstance. There seems little doubt that the telephone conversations between dispatchers and running trades crew members within the Crew Management Office are frequently loud and, on occasion, coloured with fairly graphic swear words.

The evidence establishes that both Ms. Burt and Ms. Peldiak were, in part, trained by Mr. Morgan in the procedures of crew dispatching. Both Ms. Peldiak and Ms. Burt testified that Mr. Morgan was extremely competent at his job, was helpful in their initial orientation to the work of the Crew Management Centre and, as the weeks passed, always remained available to help them out whenever they needed assistance with any problem with which they were not familiar.

Ms. Burt, who was 19 years old at the time, testified that she was first subject to physical harassment by Mr. Morgan on October 10, 1987. Her evidence establishes that she had been a friend of Ms. Peldiak for approximately a year, both having worked in a clothing retail store prior to their employment at CN. On the night of October 10th, while working at her video display terminal, she developed a stiffness in her neck. She asked Ms. Peldiak to give her a massage, which the latter proceeded to do. According to Ms. Burt, Mr. Morgan shortly came up behind the two employees stating: "Girls shouldn't be doing this, it looks funny." According to the evidence of Ms. Burt, corroborated by that of Ms. Peldiak, Mr. Morgan proceeded to take over massaging Ms. Burt's neck and shoulders, causing Ms. Peldiak to move away. Ms. Burt testified that after massaging her neck and shoulders he tried to reach down towards her breasts. According to Ms. Burt when she pulled forward he then reached under her arms, causing her to pull away again, stating "Eddie, don't". According to Ms. Burt Mr. Morgan simply laughed and went back to his desk. She testified that other employees observed what occurred, including employee Grant Johnston.

The second incident involving Ms. Burt occurred on October 13, 1987. According to Ms. Burt, on that occasion, she was busy on the telephone with a crew member when Mr. Morgan approached her from behind and began to massage her neck and shoulders once again. As she was speaking, he moved his hands forward towards her breasts and when she pulled away he again tried to put his hands under her arms. Ms. Burt again told Mr. Morgan not to do it. Ms. Burt testified that once more Mr. Morgan laughed at her reaction.

According to Ms. Burt the effect of these advances by Mr. Morgan were devastating to her. She testified that Mr. Morgan's actions, and the result of her reporting what had transpired, impacted greatly on her life. She relates that she was eventually forced to quit her job and has had to see a counsellor because of the emotional problems which resulted. The process of complaint, investigation and their aftermath are reviewed in greater detail below.

Ms. Peldiak gave evidence corroborating the account of Ms. Burt respecting the massage incidents both on October 10 and 13. Ms. Peldiak's evidence also relates further incidents of sexual harassment directed at herself. According to Ms. Peldiak's evidence, Mr. Morgan became physical with her almost from the beginning of her

training. She states that he would lean very close to her to explain things and gradually became more and more familiar. Ms. Peldiak relates that she first became uncomfortable when, not long into her employment relationship, Mr. Morgan began patting her behind and making sexually suggestive verbal comments. She states that on one occasion when she came into work looking tired, he asked what she had been doing and, specifically, whether she had been up all night with her boyfriend, saying "He must have worn you out." Ms. Peldiak relates that the grievor also made comments about the attractiveness of her legs and, on more than one occasion, made half joking references about wanting to marry her.

Ms. Peldiak asserts that the verbal communication from Mr. Morgan gradually got worse. She testified that when he began to make statements to the effect that he would buy her nice presents if she was good and repeatedly stated, in the presence of other employees, that he wanted to marry her, she became acutely embarrassed and did not know how to handle the situation. Ms. Peldiak stated in her testimony "I'd laugh at him when he talked of marrying ... he obviously was married. When he started talking about my body it got uncomfortable. To hide my embarrassment, I'd laugh it off ... I was embarrassed and uncomfortable."

The most serious allegation made by Ms. Peldiak concerns an incident which she describes as having occurred on the afternoon of October 3, 1987. On that day she was assigned to the afternoon shift, in charge of the Belleville desk. Early in the shift she proceeded to the kitchen, a small, enclosed area adjacent to the crew dispatching office, where she made herself a cup of coffee. According to her evidence she was alone in the room until Mr. Morgan entered. She states that she offered him coffee and they exchanged a few words about the shift. According to Ms. Peldiak while she was standing at the table stirring her coffee Mr. Morgan said "I know what you want", a comment he had made to her on earlier occasions. He then came up behind her and, reaching around her, put both of his hands on her breasts and pulled her against him, rubbing his penis against her behind. Ms. Peldiak testifies that she immediately pushed Mr. Morgan away from her. Feeling what she described as a combination of astonishment and revulsion, she left the room and proceeded directly to her work station. She relates that shortly thereafter Mr. Morgan followed her to her desk where he stated "If I was good I'd get some nice Christmas presents." Ms. Peldiak's evidence is that she did not discuss Mr. Morgan's assault on her in the kitchen with anyone, principally out of a sense of personal shame for what had happened. Although she and Ms. Burt frequently travelled to work together, and she had observed the two massaging incidents involving Mr. Morgan and Ms. Burt, both employees confirmed in their evidence that neither spoke to the other at any time about the stress and discomfort that each was feeling with respect to the verbal and physical overtures of Mr. Morgan.

It appears that Mr. Morgan's actions in respect of the two female employees were revealed only as a result of an incident at the home of Ms. Burt on the evening of October 15, 1987. According to her account, she was so troubled by the stress that she felt as a result of Mr. Morgan's actions at the office, that that evening while at home with her boyfriend she became upset and began crying. When her

father came home and demanded to know what the problem was, she related the two massaging incidents of October 10th and 13th involving Mr. Morgan. Her father advised her that she should first contact the Union. Following his advice she then called William Hutchens, a grievance officer with the Union and informed him what was happening with Mr. Morgan at the office. According to Ms. Burt, however, her father also notified her brother Stephen Burt. It appears that Mr. Burt, in turn, contacted Crew Manager Barry Hogan. Mr. Hogan telephoned Ms. Burt, and being advised of the general nature of her complaint, arranged for both Ms. Burt and Ms. Peldiak to meet with him at his office on October 16, 1987.

It was only in the course of that meeting that Ms. Peldiak disclosed the incident which had taken place in the kitchen on October 3rd. Both Ms. Burt and Ms. Peldiak then informed the Company of the verbal overtures by Mr. Morgan and of the two massaging incidents involving Ms. Burt. As a result of an ensuing investigation, the Company accepted the accounts of these events related by the two female employees and Mr. Morgan was discharged.

The grievor's discharge was by no means the end of difficulties for Ms. Burt and Ms. Peldiak. While Mr. Morgan's denials of any wrongdoing were not accepted by management, they received almost universal acceptance among the other employees in the Crew Management Centre. The other employees, many of whom had known Mr. Morgan for years, refused to support Ms. Burt and Ms. Peldiak or, it would appear, even to take a neutral position. In the result, both Ms. Burt and Ms. Peldiak found themselves ostracized by their fellow employees.

The aftermath of the complaint against Mr. Morgan was particularly devastating for Ms. Burt. She related that a male employee approached her and said that she did not know what she was doing and that she did not appreciate how serious her accusation was. According to her evidence she retorted by asking him whether he understood how serious it was. She further relates that a female employee told her that Mr. Morgan didn't mean to hurt anyone. Her response to the female employee was "He can do what he wants to you - not to me; it's my body!" Ms. Burt relates that people in the office ignored her, talked behind her back and would point at her. She felt enormous pressure, as a result of which she moved to a day job, which meant a downgrade to a clerical position, and worked only one further day as a dispatcher. The clerical position was, however, in the same office, and she continued to feel peer pressure against her. According to her evidence, she could no longer handle working in the office, and so booked sick and finally resigned from Canadian National. In her words, "I didn't know what else to do."

Ms. Burt testified to her feeling of enormous personal injustice and outrage. In her view she has become, in effect, a double victim, firstly of Mr. Morgan's alleged harassment and secondly of the condemnation of her peers and subsequent loss of employment. Her evidence, which was given partly in tears, relates that she had to seek emotional counselling and was forced to find alternative employment as a receptionist/secretary for an insurance adjuster, a job which pays substantially less than the position she held with Canadian National.

Ms. Peldiak has fared little better. In her evidence she relates that she was reproached and ignored by other employees, both male and female. She describes the stress which she felt in the workplace as greatly aggravated by the fact that her detailed written statement of complaint concerning the incident in the kitchen was circulated generally within the workplace, a fact which she blames on the Union. Ms. Peldiak relates that she feels humiliated and embarrassed by that development. She also expresses bitter resentment at an article relating the discharge of Mr. Morgan which appeared in the Toronto Star on April 17, 1988. The article, which generally relates the facts of the case from Mr. Morgan's perspective and reflects his characterization that he was victimized by the lies of two female employees, further aggravated the position of Ms. Peldiak in the eyes of other employees. While it is not clear from the evidence when it occurred, it is not disputed that at some point Ms. Peldiak ceased working in the Crew Management Centre and, at the time of the hearing, she was on an extended sick leave due to the stress which she has experienced.

While the evidence of both Ms. Peldiak and Ms. Burt contains reference to sexual innuendo in the words addressed to them by Mr. Morgan, it would appear undisputed that other male members of the staff of the Crew Management Centre also engaged in a degree of sexual familiarity in the words which they spoke to the two female employees, from time to time. Ms. Burt testified that she received a number of comments of a sexual nature from dispatcher Fitzroy Morrissey and Supervisors Michael Cachia and William Kravecas. She relates that Mr. Morrissey made repeated references to the attractiveness of her breasts, that Mr. Cachia "joked" repeatedly about how he likes her legs and how sexy she is. She further relates that on one occasion Mr. Kravecas, responding to her comment during a telephone consultation to forget about the problem and "... have a sleep on me", responded by saying "Boy, would I like to!"

The material respecting verbal abuse of Ms. Peldiak by other members of the staff appears to be more limited. During her testimony at the arbitration hearing she did not relate any specific incident. During the course of the Company's investigation, Ms. Peldiak stated that she and Ms. Burt did have occasion to discuss "... what was happening to us, like why are we getting all these remarks from people. It wasn't right and it bothered us a lot ...". The statement of another employee made during the Company's investigation gives further substance to this observation by Ms. Peldiak. Under questioning by the Company's officer, Mr. Grant Johnston related that on one occasion Mr. Morrissey made a comment to the effect that he would like to take both Ms. Burt and Ms. Peldiak to a beach "... where the girls can get a tan all over ...".

Mr. Johnston was called as a witness by the Union at the arbitration hearing. He was named by both Ms. Burt and Ms. Peldiak as a fellow employee who had witnessed both verbal abuse on the part of Mr. Morgan as well as his attempts to touch Ms. Burt's breasts while massaging her neck at her work station. Mr. Johnston testified that he did observe Mr. Morgan massaging Ms. Burt on both October 10th and October 13th. According to his evidence, on both occasions it was an innocent gesture and, while he had an unobstructed view, he did not

see any attempt by Mr. Morgan to touch her breasts. According to Mr. Johnston there was nothing unusual in Mr. Morgan's behaviour, and he described his fellow worker as a tactile person who had, on occasion, given him a back rub while on the job as well. While Mr. Johnston related that it did not trouble him when Mr. Morgan touched him in that way, he conceded that during one incident, when Ms. Burt was speaking to an employee on the telephone and Mr. Morgan massaged her from behind, in his opinion, she did look uncomfortable.

During the course of his statement to the Company's investigating officer, Mr. Johnston confirmed that, on at least one occasion, he overheard Mr. Morgan asking Ms. Peldiak to marry him. He characterized Mr. Morgan's words as intended in a joking manner and not offensive. Mr. Johnston also confirmed during his evidence at the hearing that on at least one occasion he witnessed what he considered to be serious verbal abuse of a sexual nature of Ms. Peldiak by Supervisor Cachia. He testified that Mr. Cachia emerged from his office and made a number of statements to Ms. Peldiak which Mr. Johnston found offensive. Mr. Johnston relates: "Lisa was on the Hornepayne desk. Mike came out of his office to make comments to her. I could see she was uncomfortable ... it started with her legs and went from there." According to Mr. Johnston's evidence, afterwards he spoke privately with Mr. Cachia, telling him that his actions were highly improper and could land him in trouble.

Mr. Morgan denies any wrongdoing whatever. During the course of the Company's investigation Mr. Morgan denied that he ever sexually harassed Ms. Burt or Ms. Peldiak either physically or verbally. He specifically denied any recollection of massaging Ms. Burt's back and attempting to touch her breasts, sexually assaulting Ms. Peldiak in the kitchen, patting Ms. Peldiak on the behind, or asking Ms. Peldiak jokingly or otherwise to marry him. During a second investigation, when specifically confronted with the statements of Mr. Johnston that he had witnessed Mr. Morgan massaging Ms. Burt's neck and had overheard his overtures of marriage to Ms. Peldiak, Mr. Morgan stated: "No, I have no recollection of this."

At the arbitration hearing Mr. Morgan's recollection was markedly different. He testified that the work in the Crew Management Centre can be very stressful, sometimes giving rise to crude language. According to his evidence he sometimes touches or massages the shoulders of other employees to raise their spirits, and that verbal banter is also not uncommon. During the course of his testimony, Mr. Morgan recalled that on October 10th he was working the afternoon shift while Ms. Burt was assigned to the Northern desk. He relates that she had a problem finding a brakeman for a crew and asked for his help. Mr. Morgan states that he approached her and while he was helping her to find a crew member, he put his hand on her shoulder. He categorically denies that he attempted to touch her breasts or that she said anything like "Eddy, don't!" He also states that on October 13th, during the midnight shift, he was on the Northern desk while Ms. Burt was on the "tail end". According to his evidence while she was on the telephone he approached to ask if she wanted a coffee, and Ms. Burt replied that she would like toast and milk. He recalls that he then put his hand on her shoulder adding that she did not say anything by way of objection.

Under examination in chief by counsel for the Union, when Mr. Morgan was asked whether he had asked Ms. Peldiak to marry him he answered "No and Yes". According to his evidence, on one occasion he was making a general comment about marriage intended as a joke, stating that men are foolish in their eagerness to get married. According to his testimony, by way of illustration, he jokingly fell on his knees in front of Ms. Peldiak who happened to be present saying "Marry me!" as a comical illustration of what he meant. Mr. Morgan stated that his comment was not intended to be addressed to anyone in particular.

Under cross examination by counsel for the Company, Mr. Morgan was asked why his recollection of these events was so much better at the arbitration than it apparently had been during the course of the Company's investigation. Mr. Morgan responded that in the wake of the allegations against him, under the pressure of the investigation, "I ... was affected emotionally ... I was completely out of my senses".

Following Mr. Morgan's testimony the Company called reply evidence. Mr. Barry Hogan, Manager of the Crew Management Centre in Toronto testified that he served Mr. Morgan with the Form 780 advising him of his discharge. On that occasion, which took place at the grievor's home, according to Mr. Hogan, Mr. Morgan registered surprise and stated that although he had massaged Ms. Burt's shoulders, he had not attempted to touch her breasts, and that nothing else had happened. During the course of Mr. Hogan's earlier evidence, given during the Company's case in chief, he also related that when, through the course of the Company's investigation, he became aware of the allegations against Mr. Morrissey, Mr. Cachia and Mr. Kravecas respecting verbal abuse of the two female employees, he met separately with each of them in his office, reprimanding them verbally for their misconduct and warning them that such activities would not be tolerated in the future.

During the course of the hearing evidence was directed, chiefly through questions put to various witnesses by counsel for the Union, going to the suggestion of a conspiracy on the part of Ms. Burt and Ms. Peldiak to falsely accuse Mr. Morgan of sexual harassment. The conspiracy theory, which first appeared in a gratuitous statement of opinion on the part of employee Grant Johnston during the course of the Company's investigation, is that personal animosity between Mr. Morgan and Stephen Burt, Ms. Burt's brother who was a member of the bargaining unit but was employed as a crew supervisor at the time of these events, is at the root of the allegedly false accusations levelled at Mr. Morgan.

The evidence confirms beyond dispute that on a number of occasions Mr. Morgan and Mr. Burt engaged in mutually abusive verbal exchanges on work related disagreements and that their relationship is not marked by an excess of cordiality. While questions were put to Ms. Peldiak suggesting that she and Mr. Burt were in a romantic relationship, this was categorically denied by Ms. Peldiak. She acknowledges that she knew Mr. Burt and that they had met socially on one or two occasions. According to her evidence, which is substantially unchallenged by evidence of any substance called by the Union, she has never had any romantic involvement with Stephen Burt. During the course of the Company's earlier investigation when the

suggestion of such an involvement was raised and the alleged conspiracy was put to her she asserted, again without rebuttal by the Union, that her limited contact with Mr. Burt had been casual only and that he was in fact living with a female companion. Both Ms. Peldiak and Ms. Burt denied forcefully, and with some indignation, the suggestion, first expressed by Mr. Johnston, that the two female employees were manipulated by Mr. Burt in a concealed attempt by him to secure Mr. Morgan's discharge.

II ARGUMENT

Counsel for the Company submits that the evidence discloses a clear case of both verbal and physical sexual harassment directed at Ms. Burt and Ms. Peldiak by the grievor. She stresses that the events which they experienced have left deep scars upon them, as one has been forced to resign and the other has had consistent difficulty returning to the workplace. Counsel stresses what she characterizes as the "selective memory" of Mr. Morgan at various times during the investigation and the arbitration with respect to the incidents alleged. In this regard she points to the discrepancy between Mr. Morgan's failure to recall anything during the course of the Company's investigation and his apparently clear recall of a number of incidents at the arbitration hearing. She further points to the evidence of Mr. Hogan confirming Mr. Morgan's admission that he had massaged Ms. Burt's shoulders at the time that Mr. Hogan delivered the Company's notice of termination to Mr. Morgan at his home, notwithstanding his earlier denials.

By contrast she characterizes the testimony of Ms. Peldiak and Ms. Burt, substantiated at least in part by Mr. Johnston, as being clear, consistent and credible in all material respects. She notes that there are no inconsistencies between the statements of Ms. Peldiak and Ms. Burt from the time that they first voiced verbal complaints to their supervisor, through the various stages of the Company's formal investigation and throughout their respective examination in chief and cross examination at the arbitration hearing. She submits that in all respects their testimony is to be preferred to that of Mr. Morgan and that the Arbitrator must conclude, on the balance of probabilities, that both of the female employees concerned were seriously victimized by verbal and physical abuse of a sexual nature at the hands of the grievor. On this basis she submits that the Company had ample cause to terminate his employment.

Counsel for the Union advances a twofold argument. Firstly he submits that the Arbitrator should accept the evidence of Mr. Morgan denying the allegations of sexual harassment. In the alternative, should the evidence disclose some degree of wrongdoing by the grievor, counsel argues that a number of factors should be brought to bear in mitigation, and that his discharge would be excessive in the circumstances.

Counsel for the Union relies on what he characterizes as evidence of the general atmosphere within the workplace. He notes that the work of crew dispatchers is generally agreed to be stressful, and that coarse language is not uncommon within the Crew Management Centre.

He further notes the evidence of a number of witnesses confirming that Mr. Morgan is generally inclined to strong verbal expression and is a comparatively tactile individual readily inclined to touch other employees, including male employees such as Mr. Johnston.

With respect to the allegations of Mr. Morgan's attempts to touch Ms. Burt's breasts both on October 10 and October 13, counsel for the Union submits that the Arbitrator should give weight to the evidence of Mr. Johnston to the effect that he saw no attempt to touch Ms. Burt in a sexual way. With respect to the allegation that Mr. Morgan asked Ms. Peldiak to marry him, counsel maintains that Mr. Morgan's words must be seen in their context, and that they were intended in a lighthearted and inoffensive way. Lastly, with respect to the kitchen incident and the alleged physical assault of Ms. Peldiak on October 3, counsel stresses that there is no eyewitness testimony to corroborate Ms. Peldiak's account of that accusation, that it is categorically denied by Mr. Morgan. He submits that in this respect the evidence of the Company is simply insufficient to discharge the burden of proof which is upon it. He argues that the conduct alleged would appear to be clearly inconsistent with what he characterizes as Mr. Morgan's good character as an employee of long-standing who commands the unqualified respect of his fellow workers. Stressing that sexual assault is a grave accusation, the proof of which should require clear and cogent evidence, counsel for the Union asks the Arbitrator to conclude that the alleged assault upon Ms. Peldiak, and indeed all of the allegations of attempts at physical familiarity made against Mr. Morgan, are simply not proved on the evidence.

In the alternative, counsel for the Union argues that if it is found that Mr. Morgan did engage in some degree of unacceptable behaviour amounting to sexual harassment, a number of mitigating factors should reduce the disciplinary outcome to a penalty less serious than his discharge. In this regard counsel points to his good prior disciplinary record over a period of 13 years of service, the undisputed evidence that Mr. Morgan was an able worker liked by his employees and that he is the principal means of support of his family. Counsel also argues that the evidence of verbal harassment of a sexual nature aimed at both Ms. Burt and Ms. Peldiak by at least one other employee and two members of supervision must weigh heavily in Mr. Morgan's favour on the issue of mitigation. Noting that no formal discipline of any kind was registered against Mr. Morrissey, Mr. Cachia or Mr. Kravecás beyond a verbal reprimand, counsel for the Union submits that the discharge of Mr. Morgan would be inequitable in the circumstances.

CONTINUED IN PART B