CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1975

Heard at Montreal, Tuesday, 12 December 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discharge assessed Yard Foreman J.D. Kopp of Kamloops, B.C., effective 18 April 1988.

JOINT STATEMENT OF ISSUE:

Following an investigation Yard Foreman J.D. Kopp was discharged from the service of the Company effective April 18, 1988 for the "physical attack and personal injuries inflicted on a fellow employee while on duty on 27 March, 1988."

The Union contends that the discharge of Mr. Kopp for the alleged incident was unwarranted and requests his reinstatement without loss of seniority and with compensation for all lost time or such other alternate relief as the Arbitrator deems appropriate.

The Company declined the appeal.

FOR THE UNION:	FOR THE COMPANY:
(SGD) L. H. OLSON	(SGD) M. DELGRECO
GENERAL CHAIRPERSON	for: ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

R. Paquette	- System Labour Relations Officer, Montreal
W. Stasiuk	- Labour Relations Officer, Edmonton
L. E. Merryfield	- T.I.B.S. Instructor, Kamloops
J. B. Flann	- Trainmaster, Prince George
S. D. Callander	- Trainman, Vancouver
C. Harbottle	- Trainman, Kamloops

And on behalf of the Union:

L. H. Olson	- General Chairperson, Edmonton
J. D. Kopp	- Grievor

AWARD OF THE ARBITRATOR

The material establishes that an altercation occurred between the grievor and fellow employee F. Callander on March 27, 1988. It does not appear disputed that they had a disagreement about whether Mr. Callander had acted contrary to a directive issued to him by Mr. Kopp in his capacity as Yard Foreman. The Company asserts that during the disagreement Mr. Kopp struck Mr. Callander without warning, from behind, with a switch lamp. The grievor denies having struck Mr. Callander with a switch lamp, and maintains that it was Mr. Callander who assaulted him, in response to which he struck him with his fist, both while standing and while on the ground.

The objective evidence does not sustain Mr. Kopp's explanation. Mr. Callander suffered an exceptional facial injury in the area of his left eye. Medical evidence establishes that the facial bone both above and below his eye was broken, and that he sustained a deep cut over the eye which necessitated twenty stitches. He also suffered nerve damage to his mouth, and a lineal fracture of the bone in the roof of his mouth. In the result, Mr. Callander suffered a partial loss of vision by reason of which he was absent from work for a period of eight months. While his eye has now fully healed, he continues to have some numbness in his mouth.

Apart from the gravity of the physical damage caused, there are other reasons to doubt the honesty of Mr. Kopp's account of what transpired. Firstly, it is not disputed that after the altercation he proceeded directly to the terminal office, booked sick and left for home. If, as Mr. Kopp maintains, he was acting solely in self-defence, it would have been plausible for him to alert the yardmaster or some other supervisor or employee with respect to what had happened. In fact, Mr. Callander was left alone, in a semiconscious state for an undisclosed period of time. Secondly, shortly after the incident, according to the statement of Yardmaster J.B. Flann, the grievor telephoned him and admitted that he had swung his switch lantern at Mr. Callander. During the subsequent investigation, and under oath before the Arbitrator, Mr. Kopp denies having made that statement or, more importantly, having made any use of a weapon in his altercation with Mr. Callander. Lastly, the eyewitness account of a third employee, Trainee Carol Harbottle, confirms that she did see, albeit at a distance, what appeared to be a switch lantern being swung at one of the two employees by the other.

On the face of the evidence the Arbitrator is driven to the conclusion that the account of the incident related by Mr. Callander must, on the balance of probabilities, be preferred to that of the grievor. This leads to the grave conclusion that Mr. Kopp engaged in a vicious attack upon a fellow employee, causing serious injury by the use of a heavy object as a weapon. I am not satisfied that there was provocation to justify such a dangerous response, or that the grievor's lack of candour with respect to the facts of this incident can be disregarded in considering mitigation of the penalty. As is well established in the prior decisions of this Office, assault against a fellow employee may justify the most serious of disciplinary consequences (see CROA 1858). There is, moreover, ample jurisprudence to the effect that the introduction of a weapon into

such an altercation may, of itself, justify the discharge of the employee involved (see General Tire Canada Ltd. and United Rubber Workers, Local 536 (1983) 10 L.A.C. (3d) 289). In this case the Arbitrator can see no reason to reverse the decision of the Company.

For all of the foregoing reasons the grievance must be dismissed.

December 15, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR