

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2297

Heard at Montreal Tuesday, 10 November 1992

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Dismissal of Hostler-Helper A. Foglietta for conduct unbecoming an employee by having instigated an altercation and struck a fellow employee, uttering threats against a Company Officer on two occasions, and deliberately destroying Company property.

JOINT STATEMENT OF ISSUE:

On May 21, 1992, an investigation was held into the conduct of Hostler-Helper A. Foglietta during his shift starting at 23h30 on May 12, 1992, and with regards to threats that were made to a supervisor on May 16, 1992. Subsequent to that investigation, Mr. Foglietta was discharged from Company service.

The Brotherhood contends that since Mr. Foglietta's record was free of discipline at the time of the incident, the discipline assessed was too severe, and that Mr. Foglietta should be reinstated and compensated for loss of salary and benefits that may have occurred. The Company declined the Brotherhood's grievance.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(SGD.) T. N. STOL

(SGD.) J. D. PASTERIS

NATIONAL VICE-PRESIDENT

for: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Gagn,

Labour Relations Officer, St. Lawrence Region, Montreal

J. D. Pasteris

Manager, Labour Relations, St. Lawrence Region, Montreal

R. Paquette

Manager, Labour Relations, Montreal

S. Fauteux

Supervisor, Diesel Shops, Taschereau Yard, Montreal

M. Belanger

Labourer, Diesel Shops, Taschereau Yard, Montreal

P. Quirion

Special Agent, CN Police, Montreal

And on behalf of the Brotherhood:

T. N. Stol

National Vice-President, Ottawa

A. Rossi

Local Chairperson, Local 179, Montreal

A. Foglietta

Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that during the course of his tour of duty commencing May 12, 1992 and ending on the morning of May 13, the grievor was involved in several incidents of unusually aggressive behaviour. The evidence establishes, to the satisfaction of the Arbitrator, that he destroyed a trainman's lamp, damaged a window frame, attempted to assault a fellow employee, striking him once on the back of the head, and made comments to his union representative which were overheard by a supervisor, and were in fact threatening to that individual. It is also not denied that subsequently, on May 16, 1992, upon being advised that he was withdrawn from service, the grievor uttered a similar threat to the same supervisor, saying "Watch your back," within the hearing of other employees.

The conduct disclosed is clearly unacceptable. Absent mitigating circumstances it would justify the most serious of disciplinary consequences. There are, however, mitigating circumstances adduced in evidence by the Brotherhood. Shortly before the events of May 12, 1992 Mr. Foglietta had been on a medical leave of absence for what has been described as depression or, in his own words, a nervous breakdown. The evidence further discloses that at or about the same time he was contemplating serious surgery, the prospect of which gave rise to extreme anxiety on his part. His physical and mental condition are confirmed in medical documents in the form of statements by both his surgeon and psychologist, tabled at the hearing.

It is not necessary, for the purposes of this award, to detail the personal nature of the grievor's medical and emotional problems. Suffice it to say that I am satisfied, on the balance of probabilities, that they did contribute to the conduct which gave rise to his discharge. The events in question are isolated, and uncharacteristic, having regard to the grievor's prior good service and disciplinary record. In addition, both through his union representative and in direct testimony at the arbitration hearing Mr. Foglietta expressed regret for what has occurred.

The issue is whether some measure short of discharge is appropriate in the circumstances. Because I accept the medical evidence before me, I am satisfied that it is appropriate to exercise my discretion to substitute a lesser penalty. In so concluding, however, I remain mindful of the legitimate interests of the Company, which is entitled to be assured that there will be no recurrence of a similar incident in the future. In my view, therefore, it is appropriate that an order for reinstatement be predicated upon the grievor providing the Company with a medical opinion confirming that his condition of depression and anxiety is sufficiently under control for him to return to normal duties.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that Mr. Foglietta be reinstated into his employment, without loss of seniority, and without compensation or benefits. His return to work, however, shall not be implemented until such time as he provides to the Company a medical opinion confirming that his condition of depression and anxiety are under sufficient control to allow him to return to normal duties. Should there be any issue as to the source and form of the medical opinion to be obtained, the matter may be spoken to.

November 13, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR