

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2346

Heard at Montreal, Thursday, 11 March 1993

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed Yardmaster P. Gilmore, December 9, 1991.

JOINT STATEMENT OF ISSUE:

Yardmaster P. Gilmore was assessed 25 demerit marks effective December 9, 1991 "for having threatened a supervisor of equipment to physically agress him on December 9, 1991, and for having delayed car repair operations in Turcot on December 11, 1991, while working as a yardmaster in Turcot on both occasions."

The Union appealed the discipline on the grounds that: there were irregularities in the investigation process, that the Company is condoning the threatening gesture of one employee and condemning that of another, the two cars that the grievor had supposedly delayed were improperly destined.

The Union submits that the assessment of discipline was inappropriate and requests that it be removed and the grievor's record adjusted accordingly.

The Company had declined the appeal.

FOR THE UNION:

FOR THE COMPANY:

(SGD.) W. G. SCARROW

(SGD.) J. E. PASTERIS

GENERAL CHAIRMAN

for: VICE-PRESIDENT, ST. LAWRENCE REGION

There appeared on behalf of the Company:

D. Gagn,

Labour Relations Officer, Montreal

J. E. Pasteris

Manager, Labour Relations, Montreal

A. Lacombe

General Yardmaster, Montreal

N. Bishop

Trainmaster, Montreal

C. Pelletier

Car Supervisor, Montreal

And on behalf of the Union:

W. G. Scarrow

General Chairman, Sarnia

F. Garant

Vice-General Chairman, Montreal

M. P. Gregotski

General Chairman, Fort Erie

R. Michaud

Quebec Provincial Legislative Board Chairman, Montreal

P. Gilmore

Grievor

#### AWARD OF THE ARBITRATOR

In the Arbitrator's view the evidence presented by the Company does not establish, on the balance of probabilities, that Mr. Gilmore was responsible for having delayed car repair operations in Turcot yard on December 11, 1991. In particular, the location and movement of two cars which were in need of repairs and which were requested to be set out by the car department, is far from clear. Indeed, it is possible to conclude on the evidence before me, that the cars had departed Turcot Yard, or were in the process of departing, when the request was made, and that Mr. Gilmore in fact advised Car Foreman Michel Brady that the cars had departed or were in the process of departing to Taschereau Yard. In the circumstances the Arbitrator is not satisfied that the Company has discharged the burden of proof which is upon it with respect to the allegation concerning the alleged delay of repairs to the cars in question.

There is, however, no question that an altercation did occur in Mr. Gilmore's tower office on December 9, 1991. It appears that the grievor and Car Foreman Pelletier were involved in a verbal disagreement over the radio with respect to the replacement of the batteries of the sense and braking unit on the rear of Train 307. There was further discussion between Mr. Gilmore and Mr. Pelletier in which the latter took exception to a directive which Mr. Gilmore attempted to give to carmen, instructing them to couple the air hose of the locomotives of a train. It appears that the work in question was properly assignable to an available train crew. Shortly thereafter General Yardmaster Andr, Lacombe, who heard what had transpired between Mr. Gilmore and the car supervisor, proceeded to Mr. Gilmore's office, where he instructed him with respect to the assignment of the hose connection work to the train crew. He further advised Mr. Gilmore that upon giving information or instructions by radio he was to speak to the carmen themselves, and not to limit himself to speaking to the car foreman. Mr. Pelletier then arrived in the tower, clearly upset by a number of aspects of his dealings with Mr. Gilmore. It is not disputed that a heated discussion ensued, during which Mr. Pelletier shook his finger at Mr. Gilmore, prompting the grievor to stand up and move towards him. Mr. Gilmore uttered words to the effect that he did not like to have fingers shaken in his face, and that, effectively, he would throw Mr. Pelletier from the yardmaster's tower if he did not stop. Mr. Lacombe and Relief General Yardmaster Guy Rochette then stepped between Mr. Gilmore and Mr. Pelletier, and the situation was defused.

The Union raises an objection with respect to the fairness of the investigation conducted. I have reviewed the materials filed, including the record of the investigation, and while I agree that the investigation was not conducted in a text book fashion, I cannot sustain the suggestion that there was a departure from the minimal standards of article 17 of the collective agreement. That conclusion is supported, in part, by the unduly legalistic positions taken repeatedly by the grievor and his Union representative. While the first presiding officer may not have conducted an ideal investigation, that is due at least in part to the fact that the parties before him acted less than ideally from the standpoint of cooperation.

The evidence discloses that the grievor did threaten a supervisor in a manner which was unacceptable. His actions were, on that basis, deserving of discipline. There are, however, some mitigating circumstances which must be considered. Primary among them is the admitted fact that Car Supervisor Pelletier spoke to the grievor in an agitated tone of voice, and used hand gestures which, by the Company's own acknowledgement, clearly provoked the reaction of Mr. Gilmore. As the account of Mr. Lacombe indicates, there was no real likelihood of Mr. Gilmore acting out his statement against Mr. Pelletier. What the evidence discloses is an emotional exchange between two individuals in the heat of the moment. In the Arbitrator's view the appropriate measure of discipline should, in the circumstances, be reduced somewhat in light of these facts. The Arbitrator therefore directs that the grievor's record be revised to reflect the assessment of fifteen demerits for the incident in question.

March 12, 1993

(Sgd.) MICHEL G. PICHER  
ARBITRATOR