

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2349
Heard at Montreal, Tuesday, 13 April 1993
concerning
CANADIAN NATIONAL RAILWAY COMPANY

and
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
DISPUTE:

Appeal of discharge of Locomotive Engineer F.A. Lammi of Capreol
effective 24 September 1991.

JOINT STATEMENT OF ISSUE:

On 28 August 1991 at approximately 0610 hours Locomotive Engineer
Lammi entered CN property while off duty and physically assaulted a
fellow employee, resulting in a personal lost time injury.
Following investigation into the incident, Mr. Lammi was discharged
from Company service for physical assault of an on-duty CN Rail
employee.

The Brotherhood appealed the discharge of Mr. Lammi on the grounds
that the discipline is excessive and there are mitigating
circumstances.

The Company declined the Brotherhood's appeal.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(SGD.) C. HAMILTON

(SGD.) A. E. HEFT

GENERAL CHAIRMAN

for: VICE-PRESIDENT, GREAT LAKES REGION

There appeared on behalf of the Company:

J. Vaasjo

Labour Relations Officer, Toronto

A. E. Heft

Manager, Labour Relations, Toronto

D. W. Coughlin

Manager, Labour Relations, Montreal

D. Brodie

System Labour Relations Officer, Montreal

J. J. Campbell

Assistant Superintendent, London

M. S. Fisher

Director, Crew Management Centre, Moncton

J. Vena

Coordinator, Transportation, Montreal

R. Bateman

Labour Relations Officer, Toronto

D. K. House

District Superintendent, N.O.D., Toronto

And on behalf of the Brotherhood:

C. Hamilton

General Chairman, Kingston

F. A. Lammi

Grievor

AWARD OF THE ARBITRATOR

On the basis of the material filed the Arbitrator is satisfied that there are mitigating circumstances to be considered which are favourable to the grievor. Firstly, it is not disputed that there was a degree of provocation with respect to the assault which the grievor committed upon another employee. It is common ground that Mr. Lammi reacted in response to a report from his daughter that the evening prior the employee in question had tried to drive her off the road in his vehicle. While the Arbitrator agrees fully with the Company's representations that it was inappropriate for Mr. Lammi to respond as he did, his was, nevertheless, not an act of gratuitous violence without some provocation.

The grievor is an employee of some thirty-two years' service who has never previously been disciplined for aggressive conduct towards another employee. While it appears that the grievor was involved in one or two previous arguments or altercations with another employee, the Company chose not to progress those matters to the level of discipline. It cannot, therefore, treat them as such in these proceedings.

Lastly, the evidence discloses that following his discharge Mr. Lammi obtained professional counselling to better assist him with "anger management". The declaration of a medical doctor, and of a professional counsellor, filed before the Arbitrator support the Brotherhood's position that he is able to return to work. In these circumstances the Arbitrator deems it appropriate to reinstate Mr. Lammi into his employment, without compensation. His reinstatement must be viewed, however, as predicated upon his own understanding that physical violence, for whatever reason, is an unacceptable form of response incompatible with the maintenance of a safe and secure workplace. Any recurrence of such behaviour will inevitably attract the most serious of disciplinary consequences.

For the foregoing reasons the grievance is allowed, in part. Mr. Lammi shall be reinstated into his employment, without compensation and without loss of seniority.

April 16, 1993

MICHEL G. PICHER

ARBITRATOR