

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2437

Heard in Montreal, Thursday, 16 December 1993

concerning

CANADIAN PACIFIC EXPRESS & TRANSPORT

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Winnipeg employees Ken Eng and Charlie Picklyk were involved in an altercation for which Ken Eng was issued thirty (30) demerits and C. Picklyk only received a letter of reprimand.

UNION'S STATEMENT OF ISSUE:

On August 17th, 1993 there was an incident in the Winnipeg terminal between Ken Eng and Charlie Picklyk. the Company issued Ken Eng thirty (30) demerits which were added to his existing forty-five (45) demerits and he was dismissed.

The Union asserts that the thirty (30) demerits issued to Ken Eng were excessive and in view of the fact C. Picklyk received only a letter of reprimand.

The Union further asserts that Supervisor J. Knelson did not comply with Article 8.2 because he entered a statement from C. Picklyk which had four (4) signatures, none of the employees were present at the interview.

The Union requests the thirty (30) demerits issued to Ken Eng be removed from his record and he be returned to full employment without loss of seniority and compensated for all wages and benefits lost.

FOR THE UNION :

(SGD.)G. RENDELL

FOR: EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

C. W. Peterson - Counsel, Toronto
B. F. Weinert - Director, Labour Relations Toronto
J. Knelson - Supervisor, Winnipeg Terminal
R. Shelest - Clerk, Winnipeg Terminal

And on behalf of the Union :

- Counsel, Toronto
D. Dunster - Executive Vice-President, Toronto
K. Eng - Grievor

AWARD OF THE ARBITRATOR

The evidence establishes, to the satisfaction of the Arbitrator, that the grievor was the prime instigator in a scuffle at work between himself and another employee. There are, however, mitigating factors which were revealed in evidence. The grievor testified that he was under the impression that the other employee, Mr. Charlie Picklyk, was lunging towards him after the two had exchanged some heated words, and that he therefore reached out to protect himself. It is common ground that the only

physical contact was a blow from the grievor's right hand and from his left foot, both of which he thrust out towards Mr. Picklyk. There were no subsequent blows or any attempts by the grievor, or the other employee, to pursue their confrontation. Significantly, Mr. Picklyk was not called as a witness and there is little, if any, evidence within the Company's case to dispute the grievor's account about what went on between himself and Mr. Picklyk. In this regard, the Arbitrator can attach little weight to the evidence of employee Robert Shelest who, by his own admission, was uncertain about the precise movements of the two employees although he did see parts of their encounter.

The evidence also discloses that some degree of fault attaches to Mr. Picklyk who, by the Company's own acknowledgment, had previously agreed to accept Mr. Eng's invitation to step outside to fight. Given that Mr. Picklyk received no more than a written warning for what transpired, the Arbitrator cannot entirely disregard the suggestion of Counsel for the Union that there was a discrepancy in the level of discipline applied to the two employees in question which was disproportionate. In all of the circumstances, I deem that is an appropriate case for a reduction of a penalty to a result less severe than discharge. In light of the grievor's prior record, however, a lengthy suspension is not inappropriate.

For the foregoing reasons the Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation or benefits, and without loss of seniority, with his record to stand at forty-five demerits. The time between his discharge and reinstatement shall be reflected upon his record as a suspension.

17 December 1993_____

MICHEL G. PICHER
ARBITRATOR