

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3260

**Heard in Calgary, Wednesday, 15 May 2002
concerning**

CANADIAN PACIFIC RAILWAY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

Assessment of 20 demerits to Yard Foreman F.D. Terlecki of Winnipeg, Manitoba.

JOINT STATEMENT OF ISSUE:

Following an investigation, Yard Foreman F.D. Terlecki was issued a Form 104 informing him that his record had been assessed twenty (20) demerit marks for: "Improper and unacceptable conduct, as evidenced by your participation in an altercation in the workplace; a violation of CROR General Rule A (ix), September 12, 1998, Winnipeg Yard, Manitoba."

The Council contends that there was no just cause for discipline and has requested the demerits be removed from Yard Foreman Terlecki's record. In the alternative, the Council contends that the penalty of 20 demerits was too severe in all of the circumstances and requests that the penalty be reduced accordingly. The Company has denied the Council's requests.

**FOR THE COUNCIL: FOR THE COMPANY:
(SGD.) D. H. FINNISON (SGD.) D. FREEBORN**

**FOR: GENERAL CHAIRPERSON
OPERATIONS**

FOR:

GENERAL

MANAGER

There appeared on behalf of the Company:

- G. Wilson - Counsel, Calgary
- D. Freeborn - Labour Relations Officer, Calgary
- F. Devine - Manager Operations, Winnipeg
- D. Winiski - Director Operations, NMC, Calgary

D. Cooke - Manager, Labour Relations, Calgary
S. Seeney - Manager, Labour Relations, Calgary
D. Guerin - Labour Relations Officer, Calgary
C. Graham - Labour Relations Officer, Calgary
R. Osborne - Witness

And on behalf of the Council:

M. Church - Counsel, Toronto
D. Finnon - Vice-General Chairperson, Calgary
F. Ridgen - Local Chairperson, Winnipeg
F. D. Terlecki - Grievor

AWARD OF THE ARBITRATOR

The evidence before the Arbitrator establishes that Mr. Terlecki was involved in an altercation with employee Bob Osborne during the course of his tour of duty on September 12, 1998. The material confirms that when Mr. Osborne commented to Mr. Terlecki that while performing remote control yard movements he should operate his locomotive more slowly, Mr. Terlecki told Mr. Osborne to "fuck off". That prompted an understandable reaction from Mr. Osborne, who initially walked away and then returned to respond to Mr. Terlecki. It appears that the two employees ended up in a confrontation on the walkway of Mr. Terlecki's locomotive, and that the grievor bumped Mr. Osborne with his chest in an aggressive and defiant manner. Fortunately no blows ensued, and Mr. Osborne removed himself from the scene. The matter might have gone no further, as the employees apparently apologized to each other in the presence of a supervisor shortly thereafter. Unfortunately, for reasons he best appreciates, Mr. Terlecki insisted on resurrecting the incident and making a formal complaint against Mr. Osborne. It is as a result of that complaint that the full facts emerged, and Mr. Terlecki was finally assessed twenty demerits for his participation in the altercation. Thirty demerits were assessed against Mr. Osborne.

The grievor has an extremely poor record of dysfunctional relations with supervisors and employees, a proclivity which earlier resulted in his being held out of service until reinstated by this Arbitrator (**CROA 2608**). More recently, serious discipline was assessed against him for a reoccurrence of the same problem (**CROA 3259**).

In the circumstances, notwithstanding the length of the grievor's service, the Arbitrator is satisfied that the assessment of twenty demerits was within the appropriate range of discipline for the conduct in question. The grievance is therefore dismissed.

May 21, 2002

(signed) MICHEL G. PICHER

ARBITRATOR