CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3451

Heard in Montreal, Thursday, 16 September 2004

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA)

DISPUTE:

The discharge of Mr. F. Gareau effective March 26, 2004 for conduct unbecoming an employee, relating to threatening comments he made to fellow employees at Brampton Intermodal Terminal between January 11, 2004 and January 26, 2004.

JOINT STATEMENT OF ISSUE:

Mr. Gareau, a garage mechanic at the Brampton Intermodal Terminal, was discharged after having made certain comments at the workplace, wherein he said that he wished he had a gun and a bullet for everyone and one for himself.

It is the Union's contention that the discharge of Mr. Gareau was a severe and unwarranted penalty. The Union is seeking reinstatement and full compensation for all losses and damages accordingly.

The Company contends that the discharge of Mr. Gareau was appropriate and justified in the circumstances.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) R. JOHNSTON	(SGD.) D. S. FISHER
PRESIDENT, COUNCIL 4000	DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

A. MacNab	– Manager, Labour Relations, Montreal
S. Grou	– Manager, Labour Relations, Montreal
L. Anderson	– Manager, Brampton Intermodal Equipment

And on behalf of the Union:
J. Moore-Gough – National Representative, Chatham
F. Gareau – Grievor

AWARD OF THE ARBITRATOR

It is not disputed that the grievor made an extremely serious threatening statement to fellow employees. It is common ground that during a coffee break with two other employees, one of whom the grievor felt was pressuring him to do work which was beyond his physical limitations, Mr. Gareau uttered words to the effect that he wished he had a gun and enough bullets to shoot everyone at work and a bullet for himself. While the Union's position is that the statement was made only once, on the occasion of the coffee break, the material presented by the Company confirms that a third employee separately registered a complaint with management about having heard the same threat out of the mouth of the grievor, on a different occasion. The report of Garage Manager Les Anderson, who was present at the arbitration hearing, confirms that the third employee was in tears, and had been prompted to report the incident at the insistence of his wife.

It is also not disputed that not long before the incident in question the grievor was involved in a heated altercation with a supervisor. During that altercation objects on the supervisor's desk were pushed by the grievor onto his supervisor's lap. That incident resulted in a twenty day suspension, a matter which was grieved and is presently pending. This Office can draw no conclusion about the merits of the prior incident save,

as agreed by the parties, to conclude that there was an obvious exhibiting of anger on the part of the grievor on that occasion, and that by reason of the twenty day suspension assessed against him, whether or not it was justified, he was clearly placed on notice as to the limits of aggressive or violent behaviour in the workplace.

During the course of the Company's disciplinary investigation the grievor readily admitted having stated that he wished he had a gun and a bullet for everyone at work, including himself. He went on to state that it was "… just a poor choice of words. Just a joke." A close examination of the record of the disciplinary investigation indicates that the grievor was less than remorseful. When asked if he had any intention of harming anyone he said "Not at all, I use psychology." Although he said that he regretted making the comments he added: "I would just like to say that I am sorry it came to this, I am sorry I lost money over this, and I am sorry they all got away with this, and I wish them good luck."

Threatening the murder of fellow employees is an extremely serious matter. While at one time such comments might have been given a certain latitude, highly publicized real life tragedies which have occurred in a number of workplaces, both in Canada and elsewhere in recent years, have understandably changed that. The obligation to protect employees and supervisors against threats and fear for their own safety and the safety of their families is now recognized as one of the highest obligations of an employer (see, generally, **Re Metropolitan Hotel and Hotel Employees Restaurant Employees Union, Local 75** (2003), 1242 L.A.C. (4th) 1

(Springate)). This Office has had prior occasion to sustain the assessment of serious levels of discipline for threats of physical violence (see **CROA 1701** and **1775**). In **CROA 1701** the Arbitrator commented, in part: “Plainly the threatening of a fellow employee in a way that threatens the peace of mind and well-being of that person in his job, and the physical acting out of such threats, is prejudicial to an employer’s interest and will justify the imposition of serious disciplinary measures.” In the aftermath of certain highly publicized cases in recent years, employers, unions and arbitrators must view such threats with the greatest seriousness.

When, as in the case at hand, an employer is faced with an employee who threatens to kill other employees, and utters those words on more than one occasion, causing obvious disturbance to persons in the workplace, it must take the threat seriously and deal with it without delay. No employer has the luxury to wait out events to see whether the threatening words are coupled with an actual serious intent. Nor are employees or supervisors who suffer such threats to be left to worry and await the test of whether the employee demonstrates that he or she had a serious intent. There is, very simply, no room for such threats in any workplace. It is no defence on the part of the individual who makes them to say, after the fact, that the threats uttered were not seriously intended, absent compelling medical or psychiatric evidence in mitigation. There is no such evidence in the case at hand.

On the basis of the foregoing, the Arbitrator is compelled to the unfortunate conclusion that the extremity of the threats made by Mr. Gareau, even if it were found

that they were uttered on only one occasion, were such as to sever the viability of his continued employment with his co-workers, notwithstanding his fifteen years of service.

For all of the foregoing reasons the grievance is dismissed.

September 20, 2004

(sgd.) MICHEL G. PICHER
ARBITRATOR