

ARBITRATION

BETWEEN:

**CANADIAN NATIONAL RAILWAY COMPANY**

- and -

**CANADIAN NATIONAL RAILWAYS POLICE ASSOCIATION**

Concerning the grievance of Wayne Telcs

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**A W A R D**

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BEFORE:

Andrew C.L. Sims, Q.C..... Arbitrator

REPRESENTATIVE FOR CNR

Denis Laurendeau..... Manager, Labour Relations  
Stephen Covey..... Chief of Police  
Doug Fisher..... Sr. Director, Labour Relations

REPRESENTATIVE FOR CNRPA

Patrick Nugent..... Counsel  
William Casner..... National President  
Guy Corriveau..... National Secretary/Treasurer  
Wayne Telcs..... Grievor

HEARD in Montreal, Quebec on November 9, 2012

AWARD ISSUED on December 6, 2012

## AWARD

The Canadian National Railway Company (CNR) employs its own police force. Until he was discharged on June 25, 2012, the grievor Wayne Telcs was a Constable within that force stationed in Edmonton, Alberta. He grieves his discharge through his bargaining agent the Canadian National Railway Police Association (the Association). The discharge document describes the allegations as follows:

Discharge and the time being held out pending investigation from June 6, 2012, to June 25, 2012, to be considered as suspension without pay.

Physical assault at the Dell Planet restaurant in Montreal, QC, on May 22, 2012, and violations of the CN Police Policy and Procedure Manual:

- 1) Violation of any criminal law. Section 267 of the Criminal Code of Canada, by hitting the jaw and the nose causing bleeding of Mr. Tulu Mohammed;
- 2) Any act or omission contrary to good order and discipline or conduct likely to bring discredit to the Department by displaying your CN police badge after committing an assault on Mr. Tulu Mohammed and by providing a false statement regarding this incident to the police;
- 3) Violation of any rule or order of the CN Police Service and/or CN, refer to Chapter one, section 1.1.4 of the Policy Procedure Manual.

The Association grievance, filed on behalf of Cst. Telcs reads:

- 1) Requests that Mr. Telcs "be reimbursed his full pay from June 06/12, until he was notified his employment with CN Police was terminated";
- 2) Maintains that the discipline assessed against Mr. Telcs "resulting in a discharge is unjustified, harsh and clearly punitive";
- 3) Requests that the termination of Mr. Telcs "is over-turned and that the company engage in dialogue with the CNRPA to determine a fair result for the incident";
- 4) Requests reinstatement of Mr. Telcs "immediately with full pay and without loss of benefits as well as redeem his full seniority."

The Company declined the grievance. It submits that holding Mr. Telcs out of service pending investigation without pay was warranted and permitted by the collective agreement. It further maintains that discharge was the appropriate disciplinary response in all the circumstances.

Cst. Telcs served as the Association's Vice-President and was also a representative on the Pension Committee. On May 22, 2012, he flew to Montreal for a Pension Committee meeting. That evening, he went to a bar located within the train station adjacent to CN's Headquarters. He had several drinks, met some pensioners, who left before he did, and struck up a conversation with a waitress. What happened towards the end of the evening is described in more detail below. Suffice to say for now, since it is admitted; Cst. Telcs in anger and without provocation assaulted the restaurant's night manager, a Mr. Tulu Mohammed. Station security and then Montreal City Police were called. Cst. Telcs, accidentally in his view, deliberately in CN's view,

identified himself as a CN Police Constable. Criminal charges were not laid, but a couple of days later CN was informed of the incident. Following an investigation, which included a review of video evidence and a disciplinary hearing, the grievor was dismissed. Most of the important facts in the case are not in dispute, although significant differences in the characterization of events makes a fuller review necessary.

The Union's brief succinctly summarizes the issues this case raises:

- 1) Was the Employer justified in suspending Cst. Telcs without pay during the investigation?
- 2) Was the Employer justified in disciplining Cst. Telcs for his off-duty conduct?
- 3) If there were grounds for discipline based on off-duty conduct, in all the circumstances, was discharge an excessive penalty?
- 4) If discipline was warranted, but discharge was excessive, what is an appropriate alternate penalty?

For the reasons given below, the answers are:

- 1) Yes
- 2) Yes
- 3) Yes
- 4) A suspension up to the date of this Award followed by reinstatement is an appropriate alternative penalty.

#### **The Incident and Its Aftermath**

Cst. Telcs' discipline is based on what he did on the night in question as well as the veracity of his responses once the authorities were called. The physical assault was recorded on a videotape recovered from the records of the restaurant. It shows the assault itself and the activities in the hall that led up to, and for a time following, the incident.

CN's investigation also included a review of statements taken shortly after the event from Cst. Telcs, Ms. Collins the waitress, Mr. Mohammed the night shift manager and victim of the assault, Mr. Trudel the responding security guard, and the Montreal City Police.

On June 11, 2012 Cst. Telcs appeared with an Association representative for a disciplinary hearing, the transcript of which is in evidence.

The gist of CN's allegations are that Cst. Telcs was hanging around the bar towards closing time. After having several drinks, he became upset with the manager who wanted to close down and who Cst. Telcs perceived to be mistreating the waitress. He suddenly, without any provocation or threat, assaulted the manager with a deliberate blow to the jaw and nose with his elbow.

CN alleges that, when a station security guard and shortly afterwards the Montreal Police were called, Cst. Telcs "flashed the badge" and falsely told them his action had been provoked and was in self-defense. As a result, no criminal charges were laid. Cst. Telcs took no steps to report the incident to CN. Until confronted with the video evidence, Cst. Telcs maintained that the assault was provoked and defensive.

Cst. Telcs described going into the restaurant to visit with some of the pensioners who were there already and to have some supper. He had five or six drinks plus a shot of something chosen for him by the waitress. During the course of the evening, he chatted with the waitress on and off and once or twice went outside with her for a cigarette.

Mr. Mohammed the manager told the Security Officer that the bar was otherwise empty and he decided to close down. Cst. Telcs wanted to stay longer. After checking with the waitress, Mr. Mohammed agreed. Cst. Telcs took his drink and went to play the video lottery machines. Mr. Mohammed and the waitress were in the back cashing out. The waitress came out of the office, where Cst. Telcs was standing, and let out a yell of surprise at seeing him there. Mr. Mohammed asked who was there and came out of the office and, almost immediately, was elbowed in the face by Cst. Telcs.

Cst. Telcs denied he was "hanging around" the back office. He explained his being outside the office as a result of his going to the washroom and then hearing yelling and swearing from the backroom. He looked in and saw Mr. Mohammed and Ms. Collins arguing, with Mr. Mohammed holding on to her arm. He says he poked his head in and asked what was going on but was told by Mr. Mohammed it was none of his business and to get out of the office. He did so but waited outside the door. He says he was going to go out for another cigarette with her.

Cst. Telcs says when Mr. Mohammed came out "I voiced my displeasure at the way he was treating the waitress." Mr. Mohammed told him it was none of his business and "I struck him out of anger."

After reviewing the videotape it is clear that Cst. Telcs was indeed "hanging around". I accept that he stopped at the office door after going to the washroom and that he heard Ms. Collins and Mr. Mohammed at least bantering backwards and forwards. I am not convinced that anything happened that was sufficient to cause him any real concern. My sense is that he was fairly drunk, anxious to go out again for a smoke with the waitress, and a little annoyed at the manager's efforts to close down. When the manager emerged, Cst. Telcs' deliberately elbowed him in the face in a vigorous manner without any apparent threat or provocation. This action was executed with some skill and force. There was absolutely no indication of provocation. In her statement Ms. Collins said:

"Me and Tulu ramble at each other loud and often and that might have triggered the elbow to Tulu's face but that is still unknown and extremely random because there was not anything that could have provoked him to do that."

Ms. Collins concluded that the manager thought he was about to be robbed, but she says that was clearly not Cst. Telcs' intention. Rather, she surmised, and in my view perceptively:

"... possibly was a way to try and impress me or something or other."

She described him as having been a gentleman all night, but by the time of the assault, intoxicated. She says he immediately regretted what he had done, although that is not apparent on the video since Cst. Telcs remained agitated for some time.

The manager called security and he or they called the Montreal Police. Cst. Telcs went to the washroom and security was there as soon as he came out. Security asked him to produce his identification.

While inappropriate, it was generally conceded that at times police officers involved in a situation like this, when a fellow officer responds, will "flash the badge." That is intended to indicate to the responding officer that the individual is also a police officer. The implicit message is that he should be treated with leniency and discretion; "cut a bit of slack". In the disciplinary hearing Cst. Telcs was asked whether he had done so in this case, which he denied. He agreed he was asked for ID and that he tried, but with difficulty, to get his driver's license out of his wallet. He maintained that he did not specifically identify himself as a CN Police Officer to the Security Officer, but that his badge case flipped open trying to get his driver's license out, and that his police ID was observed in the process.

Ms. Collins' statement says Cst. Telcs did not show his badge, but it fell out and she saw it shine. Cst. Telcs' admits that he told the Security Officer and then the Montreal City Police Officer that he had acted in self-defense.

Officer Trudel records his interaction with Cst. Telcs as follows:

The subject took out his wallet and showed his CN Police badge on one side and a piece of ID from Edmonton on the other. He explained his side of the story to Mr. Trudel. His name is Wayne Telcs. He had a few drinks in the restaurant and then tried to leave the establishment at the request of the manager. Mr. Telcs then headed to the south exit of the restaurant, i.e., toward Everest, thinking that he could leave. He couldn't leave, however, because the steel gates on that side are locked at night. Believing that Mr. Telcs did not want to leave, the manager, Mr. Tulu, reportedly insulted him and grabbed him by the arm to hustle him to the exit. When Mr. Telcs was grabbed, he responded by elbowing the victim in the face. Mr. Telcs said to the officers he was guilty of his actions and also that he was intoxicated.

He agrees he told the Montreal Police essentially the same thing and that it was a lie, told because "I realized I made a mistake." I would have had a lot less difficulty with the "flashing the badge" allegation if Cst. Telcs had chosen to tell the truth at the time. I accept that he was probably quite impaired, and this adds some credibility to his explanation that the badge was exposed as a result of his fumbling to get at his drivers' license. Were it not for Ms. Collins' statement, I would be inclined to find he deliberately flashed his badge. Based on her statement, I am prepared to accept on balance that it was exposed accidentally.

### **Suspension without Pay**

The question of when an officer can be suspended without pay is an issue of importance to the Association, since it applies to all officers not just to Cst. Telcs.

The parties have agreed upon two addendums to their collective agreement each addressing disciplinary issues. In Addendum 7B-3 the Company agrees to hold formal investigations as soon as practicable, but with certain notice and due process protections for the officer involved. Addendum 7B-3(f) provides:

- (f) Employees will not be held out of service pending investigation unless:
  - (i) The circumstances of the incident are such that there is reason to believe that the employee's continued performance on the job could constitute a hazard to himself/herself, other persons or the operations;
  - (ii) The offence is considered sufficiently serious to warrant such action;
  - (iii) It is essential to carrying out the investigation.

*(emphasis added)*

Addendum 7B – 3(i) provides:

- (i) An employee who is held out of service while under investigation, except in cases where the offence with which charged is of a nature which may result in suspension or dismissal, will be paid for any loss of schedule wages. Suspension will commence from the date the employee is removed from service. Dismissal will be effective on the date the decision is made to dismiss the employee.

(See Addendum 7-C) *(emphasis added)*

Addendum 7-C provides:

This is with regards to concerns raised by the Association related to employees who face disciplinary investigations being suspended without pay pending their hearings.

While we agree with the legal premise of the presumption of innocence until proven guilty, there are certain circumstances where due to the nature of the allegations, it is prudent to remove the individual from the work place. This may be due to violence or perceived threats against the Company, its officers, employees or customers, or where the alleged offense is one involving trust or dereliction of duty.

By copy of this letter I wish to remind the parties involved in disciplinary proceedings that CN Chief of Police or his/her delegate is not to hold constables out of service pending investigation except in the most serious of cases. In such event, we shall advise the President of the CNRPA of the reasons. *(emphasis added)*

The Association argues that 7B 3(f) provides a general rule against suspensions pending investigation. It further argues that all three of the listed elements in the section must be met for the section to apply; that is, it would interpret the section as if there were an implicit “and” at the end of subsection (ii), not an implicit “or”. It would have been preferable had the parties made that choice themselves. As it is, the clause can be read either way and I am left to fathom their intent from the subject matter. The more probable intended meaning is that any one of the three listed circumstances, each serious but each addressing different justifications, is sufficient. If it were otherwise, and there was no barrier to carrying out the investigation, an officer whose continued performance on the job constituted a hazard to himself or others could not be suspended. Such an intention is unlikely. Having said that, I believe the three sections nonetheless color each other’s meaning to the extent that each justification, albeit separate, must be itself seriously compelling. The clause is an exception to the general rule and should be construed narrowly.

The alleged offences here are, in my view, sufficiently serious to warrant a suspension pending investigation. It was an apparently angry unprovoked physical assault; conduct which, without some compelling explanation, calls into question the grievor’s state of mind and ongoing

suitability as a police officer. It was accompanied by deceit through deliberately misleading statements to the responding officers. This deceit at the time was perhaps the only thing that saved Cst. Telcs from facing criminal prosecution.

The Association argues that common assault is not "serious criminal conduct" for the purpose of point (f)(ii). In support of this it cites:

*Re Bigelow and Taber Police Service* (February 9, 1999) Alberta Law Enforcement Appeal Board  
*J.F. Phillips v. Treasury Board of Canada* (1991) 23 L.A.C. (4<sup>th</sup>) 403

The facts here go beyond a simple assault in that it was deliberate, vigorous and unprovoked. It was an abuse of power if not authority. The facts include a subsequent effort to mislead the investigating officers.

The question of whether the suspension without pay was justified in the circumstances turns on the words of 7B-3(i). "Whether the offence with which the grievor was charged is of a nature which may result in suspension or dismissal ..." In the context within which the word "offence" is used here, it refers to the allegation of cause, it does not require that criminal charges actually be laid. I agree with the following observation:

33 At common law, one that is guilty of a criminal offence may be discharged. In this case, the employee admitted doing property damage which might have become the subject of a criminal charge, and the fact that the fellow employee did not lay the charge does not lessen the employer's right to discipline the employee whose conduct might have been classified as a criminal act.

*Millhaven Fibres Ltd. v. Ceil, Chemical and Atomic Workers International Union Local 9-676 (Mattis Grievance)* [1967] O.L.A.A. 4 (Anderson)

I find that the charges were in fact "of a nature, which may result in suspension or dismissal." Indeed, had it not been for Cst. Telcs' very long service, they may well have resulted in dismissal. I find suspension without pay was justified within the parameters negotiated by the parties.

#### **Off Duty Conduct**

The Association argues that CN has not met the onus placed upon it to show that Cst. Telcs' off-duty conduct sufficiently affects its interests as to justify discipline. The test, it urges, is set out in *Millhaven Fibres (supra)* at paragraph 29 which holds that an employer must show:

- (1) the conduct of the grievor harms the Company's reputation or product;



- (2) the grievor's behavior renders the employee unable to perform his duties satisfactorily;
- (3) the grievor's behavior leads to refusal, reluctance or inability of other employees to work with him;
- (4) the grievor has been guilty of a serious breach of the Criminal Code and thus rendering his conduct injurious to the general reputation of the Company and its employees;
- (5) [the conduct of the grievor] places difficulty in the way of the company properly carrying out its function of efficiently managing its Works and efficiently directing its working forces. (at para 20)

The degree to which these principles apply to a particular case depends on the nature of the individual's employment and of the employer's business. CN Police are police officers appointed as such by a Superior Court Judge under the *Railway Safety Act*. The full extent of their role is set out in Sub-Section 1.1.4 of Section 1 of the Policy and Procedure Manual of CN Police. Cst. Telcs as a long serving officer knew of these responsibilities. He does not plead any misunderstanding on this point. CN provided several useful references to the special role a police officer plays in society and the obligation it places upon them with respect to their off-duty as well as their on-duty conduct. This role significantly distinguishes police officers from ordinary employees of the type referred to in *Millhaven Fibres (supra)*.

The Supreme Court of Canada, dealing with a criminal conviction (which did not occur here) and specific legislation, commented:

In deciding whether there are specific circumstances, the arbitrator must not lose sight of the special role of police officers and the effect of a criminal conviction on their capacity to carry out their functions. A criminal conviction, whether it occurs on-duty or off-duty, brings into question the moral authority and integrity required by a police officer to discharge his or her responsibility to uphold the law and to protect the public. It undermines the confidence and trust of the public in the ability of a police officer to carry out his or her duties faithfully.

*City of Lévis v. Fraternité des Policières de Lévis Inc.* [2007] 1 S.C.R. 591 at para. 70

In the same case the Court made comments sufficient to distinguish police officers from other employees in the application of the *Millhaven Fibres (supra)* test. It said, at para. 42-43:

42... it appears that the connection requirement applies differently to municipal police officers than it does to other municipal employees. A criminal offence committed by a police officer is more likely to have a connection with his or her employment than an offence committed by another municipal employee. Thus, for example, a municipal employee was able to prove that a sexual assault during working hours was not connected with his employment, and therefore that he should not be dismissed ...

Similarly, a municipal firefighter who defrauded the municipality's employees' credit union was held not to have committed an offence in connection with his employment ...

43 The same results would not be possible for municipal police officers under s. 116(6) C.T.A. This is because most, if not all, criminal offences committed by a municipal police officer will

be connected to his or her employment due to the importance of public confidence in the police officer's abilities to discharge his or her duties.

This supports the view expressed long ago by Arbitrator Frumkin:

The position of a law enforcement officer differs from other employment as regards the standard of conduct that will be required of an incumbent in such a position. The conduct of such a person, whether on or off duty, may be the subject of scrutiny. Such conduct, where it places in doubt the integrity, honesty or moral character of the police officer, may weaken his effectiveness, cause embarrassment to the police force of which he is a member, and may as such be quite incompatible with his position.

*Re Ville De Granby and Fraternite Des Policiers De Granby Inc.* [1981] 3 L.A.C. (3d) 443 (Frumkin)

See also:

*Blakeney v. Police Review Board* [1995] CanLii 4324 (N.S. Ct. Appeal)

I recognize the quotation in *Blakeney* itself is from the Police Review Board and was only upheld by the Court as being reasonable and within the Board's jurisdiction.

I have reviewed and found helpful the discussion paper "Off-Duty Police Conduct" prepared for the Office of the Police Complaint Commissioner of British Columbia by Paul Ceyseus, Barrister and Solicitor in June 2000. Using the author's framework, I do not consider that an officer is always "on duty" so that there is always a nexus between their conduct and their job. However, the reputational interests of an Employer are far greater and more obvious in police employment because of the public trust and respect aspect of policing. I also accept the caution quoted at page 8 of that paper from a report on the RCMP – *Sanctioning Police Misconduct – General Principles*:

"[i]n determining whether certain misconduct would likely damage the reputation of the police force, the proper test is whether a reasonable person who was fully informed of all the relevant facts would be of the opinion that the misconduct in question brings discredit on the police force." However, the report goes on to state that:

The issue of "harm to the reputation of the police force" needs to be carefully examined in the context of each case. Police discipliners should not automatically report to this criteria as a justification for a severe sanction without some evidence that damage to the reputation of the force has occurred and is so great that a severe sanction is warranted. The assumption that the reputation of the police force is damaged by the misconduct of an individual police officer can easily be overstated. Seldom will the isolated misconduct of one police officer result in the loss or substantial lowering of a good police force's overall reputation. The public and others are normally intelligent enough to appreciate that the individual misconduct of one police officer ought not to be visited upon the reputation of the entire police department.

I agree with this sentiment and would add that the embarrassment police officials experience over the misconduct of a member should not too readily be equated with proof of harm to the force's reputation with the public. However, I am satisfied here, given the location of the events, there was a risk of damage and some actual damage to the reputation of the CN police force.

One feature of police work that distinguishes police officers from other employees is the role their ongoing credibility can play in criminal proceedings. The rules of requiring proactive police and crown disclosure means that such conduct can easily become the subject of questioning in a criminal trial in which an officer is called to testify. Chief Covey alluded to this and his concerns on the point are well founded given such decisions as:

*R. v. O'Connor* [1995] 4 S.C.R. 411

*R. v. McNeil* [2009] S.C.J. No. 3

A suggestion I reject is that, as a private but legislatively sanctioned police force, the CN Police should be judged by a lower standard than other police forces. Rather, I agree with Chief of Police Covey that the force has a duty to uphold the highest professional standards both on general principle and because the right to maintain such a private police force is ultimately dependent on government's view of its ability to maintain public trust.

In this case, I find Cst. Telcs' conduct, although off-duty, does have a sufficient nexus to CN's business to justify a disciplinary response. The restaurant in question was located right next to CN headquarters and in the railway station itself. Whether disclosing the badge was accidental or not, it was nonetheless highly likely that Cst. Telcs' status as a CN police officer would come out in the proceedings somehow, as in fact it did. The very nature of the conduct, both the assault itself and the subsequent deceit are issues over which CN had a legitimate concern.

#### **Is Discharge Appropriate?**

I find that CN has established conduct justifying discipline. I now turn to whether these circumstances, when weighed with all the relevant mitigating and aggravating factors, justify the penalty of dismissal and if not, what alternative remedy is appropriate. The Association refers me to the customary lists of factors set out in the well-known cases of:

*Steel Equipment Co. Ltd.* (1964) 14 L.A.C. 356, and

*Re: Wm Scott & Co.* [1977] 1 Can. LRBR 1 (Weiler)

The Association emphasizes five factors in particular. Three relate to the grievor's long service and his record during those years. In addition, the Association maintains that:

- the grievor's actions were committed on the spur of the moment and were not premeditated or planned in any way; and
- the grievor immediately attempted to apologize to Mr. Mohammed, and has since apologized for any embarrassment to the Employer;

In support of its position that discharge is excessive, the Association marshaled what even the Employer agreed was an impressive array of examples of even more egregious conduct by police officers that engendered responses short of discharge. These were:

*Kyle v. York Regional Police Service* (Ontario Civilian Commission on Police Services, March 11, 2003)

*Kenney v. Ontario Provincial Police* (Ontario Civilian Commission on Police Services, July 12, 2004)

*Wasylyshen v. Edmonton Police Service* (Decision of the Presiding Officer, June 1, 2010)

Complaint against Cst. Griffin, dated September 30, 2011 (H.D. Boyle, Adjudicator)

*Manitoba First Nations Police Association v. Dakota Ojibway Tribal Council* [2003] CLAD No. 76

*Goss v. Edmonton Police Service* (20, Aug. 2011, Alberta Law Enforcement Review Board 032-2011)

*Northwest Territories (Department of Justice v. PSAC)* [2010] NWTLAA No. 7

*Halifax (Regional Municipality) Police Service v. Wilms* [1999] NSJ No. 247

*Shediac (Town) v. CUPE Local 2585* (1991) 22 L.A.C. (4<sup>th</sup>) 379

A.B. Edmonton Police Service (Decision of the Presiding Officer, 15 September 2010)

At the point of termination Cst. Telcs was unquestionably a very long serving police officer. He was 53 years old and had served for 29.5 years. About 2 ½ years ago he submitted an application for promotion to the Inspector's level and succeeded in qualifying for promotion at some future time. He has also pursued continuing educational activities including a degree in order to further his career.

His disciplinary record consists of the following infractions. There are four written warnings.

2002/05/02	For refusing an order from your supervisor, Inspector Benoit Tessier to attend a derailment site at Firdale, MB, during an emergency situation on May 2 <sup>nd</sup> , 2002.
2008/09/30	Officer Telcs has for expectation that during each quarter he will issue a

minimum of 25 violation tickets. For the period from July 1/Sept. 30, 2008, Officer Telcs only issued 18 violation tickets contrary to the expectation set for him.

2009/02/06	Officer Telcs took CN vehicle 072531 for personal reason contrary to CN Police policy. The vehicle was utilized by Constable Telcs to bring back a "bobcat", from his recreational property back to the city.
2011/03/01	Failure to follow CN Policy re travel

Effective April 30, 2012, he was also assessed 20 demerit points for "use and communication of material of an obscene nature"; basically exchanging internet pornography with other officers. Discipline is given effective as of the date of the offence, but Cst. Telcs did not actually receive the disciplinary document until the day of his hearing into the assault charge. This, the Association argues, is significant in that he had no time to absorb and respond to the message it conveyed. I do not discount that argument entirely, but note that he knew before the formal discipline was issued that he had been caught doing something contrary to CN's policy and contrary to good judgment. He did not need a letter to recognize that he was in trouble over his conduct.

I accept that Cst. Telcs has no previous record of any violent behavior, abuse of authority or inappropriate use of force. This conduct, in the face of an almost 30 year career, appears to be a one-time incident and significantly out of character. No issue of alcohol addiction or similar explanation is raised, but Cst. Telcs, on the basis of the quantity of alcohol he had been served and based on the videotape, was clearly impaired at the time.

The evidence supports the view that Cst. Telcs, at least once the police arrived, tried to apologize. He apologized to his Chief of Police once the matter was disclosed. That was perhaps in his self-interest but also goes some way to showing remorse and a recognition of the inappropriate nature of his conduct.

The case law provided by the Association, from across Canada, is compelling. I do not propose to analyze each one separately. However, many of the factual circumstances are even more serious than the events here and yet the discipline imposed fell short of discharge.

I do not propose to canvas all the factors, mitigating and aggravating listed in those cases, or that go into my decision, but I do note the primary considerations. I find as an aggravating factor that Cst. Telcs still appears not to have totally accepted and admitted to all the circumstances involved. He only dropped the self-defense excuse when confronted with conclusive video evidence that there was absolutely no provocation. Even now he maintains he was not "hanging

around” when he quite clearly was. His explanation for lying to the police at the time remains less than fulsome.

The principal mitigating factor is his very long service. CN police work has been his lifetime career. Both he and CN have invested a lot in his training and experience. Despite the written warnings received earlier, his record up until this year was relatively clear and involved no similar conduct at all.

As noted above, the public and employers of police rightfully expect a very high standard of police officers. However, the corollary is that this in itself makes police work a stressful occupation. This does not excuse aberrant conduct, but it justifies a measure of humanity when determining whether one instance of human failing justifies ending a career.

Loss of pay during a period of suspension is a factor to be considered in the overall assessment of an appropriate final disposition. See: *Bigelow (supra)* at p. 10. Here, this award is issued in reasonable proximity to the events in question (at least compared to many police discipline proceedings in Canada).

I believe in these circumstances Cst. Telcs’ long service is sufficient to support the substitution of a significant suspension without pay for outright dismissal. This disposition will give him a final chance to complete the career he put at serious risk by his conduct. Any repetition of such conduct will unquestionably place him in jeopardy, but I believe the employment relationship is not at this point irreparably damaged. The onus will be on Cst. Telcs to show his employer and colleagues through his future conduct that this was indeed a one-time aberration.

I therefore uphold the finding of just cause for discipline but substitute a period of suspension without pay, ending as of the date of this award, as the penalty. For seniority purposes the period of suspension will be treated as if it were a period of leave without pay.

DATED at Edmonton, Alberta this 6<sup>th</sup> day of December, 2012.



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ANDREW C.L. SIMS, Q.C.