

**IN THE MATTER OF AN ARBITRATION**

BETWEEN

**CANADIAN NATIONAL RAILWAY COMPANY**

("Company")

and

**INTERNATIONAL BROTHERHOOD OF ELECTRIC  
WORKERS (SYSTEM COUNCIL NO. 11)**

("Union")

**Amit Arora Grievances  
Discharge**

**Arbitrator:**

Richard I. Hornung, Q.C.

**For the Union**

Robert M. Church	Counsel
Steve Martin	Senior General Chairman
Lee Hooper	General Chairman
Gurpal Badesha	Regional Representative
Amit Arora	Grievor

**For the Company**

Francois Daignault	Manager Labour Relations
Susan Blackmore	Senior Manager Labour Relations
Simon-Pierre Paquette	Director Dispute Resolution and Labour Standard
Adam Knorr	Supervisor S&C
Andrew Kich	Retired/Manager S&C

**Hearing**

May 23 - 24, 2019;  
February 10, 2020

Calgary, Alberta

## AWARD

### I

1. Mr. Arora's work history and circumstances are set out in paragraphs 1 to 5 of decision **AH 673(A)**. Additionally, following my decisions in **AH 673(A) & AH 673(B)**, the Grievor's demerits total now stands at 50.

### II

#### **Discharge for Uttering a Threat to Company Officers**

2. On April 19, 2018, Amit Arora (the "Grievor") was served with a notice to:  
*...provide a formal employee statement in connection with circumstances and events surrounding your alleged threat on March 16, 2018 made to company officers that you may cause physical harm to other employees.*
3. The information supporting the factual circumstances on which the Company proceeded was provided to the Grievor prior to the investigation on April 25, 2018. That material included the statements of Mike Debruyne, S&C Coordinator, Andrew Kich, S&C Manager Western Region and Terry O'Brien, S&C Supervisor.
4. At the outset of the investigation the Union objected (Q. 5) to the admissibility of the statement of Mr. Debruyne on the basis both that it was obtained some seven weeks after the incident and that he did not have any direct involvement in the interactions described therein. It asserts that the admissibility of his memorandum is coloured by the innuendos and opinions included therein.
5. In dealing with the objection at this stage, it is important to keep in mind the oft quoted principles, set forth in **CROA 2073**, that disciplinary investigations:  
*...are not intended to elevate the investigation process to the formality of a full blown civil trial or arbitration.*

*What is contemplated is an informal and expeditious process by which an opportunity is afforded to the employee to know the accusation against him, the identity of his accusers, as well as a content of their evidence or*

*statements, and to be given a fair opportunity to provide rebuttal evidence in his own defence.*

6. Mr. Debruyne's statement was provided to the Grievor in advance, as it must be, in order to meet the requirements set out in **CROA 2073**. The full issue of the relevance and admissibility of the same following the Union's objection thereto, is to be fully addressed under the formal spotlight of "*a full blown ... arbitration*". For the purposes of a fair and impartial investigation, it was important for the Company to produce the statement and equally important for the Union to raise its objection. The fact that the Investigator did not exclude the evidence based on the Union's objection (irrespective of whether it was well founded or not) does not lead to a conclusion that the investigation was therefore not fair or impartial. While the document was properly produced and objected to at the investigation, its relevance and admissibility are appropriately addressed here.
7. It is apparent, from his statement, that Mr. Debruyne was not involved in the conversations between the Grievor and Mr. Petrucha, and that he arrives at some unsupported conclusions. However, that does not mean that his entire statement is inadmissible. There are portions in which he describes the interactions of the two protagonists, that he personally witnessed, which are admissible. Despite his statement that he "*Did not have direct involvement in this conversation...*" he allows that he "*... was in (his) office and heard the exchange*".
8. He observed that the Grievor: "*... aggressively went after Jo about some missing pages in a book we used to track cable records*"; and, that he suggested, in an accusing manner, "*... that the records were incomplete and that there was no way to validate anything because Jo had not kept the originals*". Based on what he saw and heard, Mr. Debruyne formed the opinion that: "*... Amit was unnecessarily angry for such a small thing*".
9. The observations and opinions, referred to above, were ones that Mr. Debruyne could allowably express based on his personal experience in overhearing the

conversation and observing the interaction between the Grievor and Mr. Petrucha. The Grievor denies that he was either aggressive or agitated at the time. The weight to be given to these opposing positions of the Grievor and Mr. Debruyn is matter which is properly to be left for the arbitrator.

10. That said, the statement of Mr. Debruyn does not form the basis of the present grievance; nor, is it determinative of the same. Its only value lays in explaining the context within which the issue - which led up to the threats - arose as well as the Grievor's disposition at the time. I have weighed both the statements of Mr. Debruyn (as well as the evidence of Mr. Kich and Mr. O'Brien) and the denials of the Grievor and conclude that in the exchange witnessed by Mr. Debruyn, the Grievor was disproportionately upset and agitated when he pursued Mr. Petrucha over the issue.
11. The circumstances which support the allegation that the Grievor uttered a threat to Company Officers that he "*may cause physical harm to other employees*" are contained in the statements of Messrs. O'Brien and Kich.
12. The significant portions of Mr. Kich's statement are set out as follows:

*On the morning of March 16, 2018, I was made aware of an alleged employee conflict that was ongoing between two S&C technicians in Thornton Yard. Mr. Arora was making accusations against Mr. Petrucha, stating that Mr. Petrucha destroyed relevant cable records impacting Mr. Arora's ability to complete a task earlier in the week.*

*Because of the poor working relationships Mr. Arora has had with many of his co-workers, I chose to have a Supervisor intervene and sit down with the two individuals to mediate a resolution. ... I instructed Mr. O'Brien to attend from Squamish.*
13. Although Mr. Kich intended to be at the mediation conducted by Mr. O'Brien, he was delayed by traffic and arrived at approximately 2:30 when it was already in progress.

*... Mr. O'Brien had already addressed the issue and was trying to bring both individuals to a mutual understanding. Mr. Petrucha was not very vocal at this time but had agreed to make compromises and come some sort of an*

agreement: Mr. Arora on the other hand would not waver from his stance and refused any sort of resolution.

... I had highlighted the fact that the majority of the conflicts that transpired in the office surrounded Mr. Arora and his inability to build any relationships with his co-workers. At one point Mr. O'Brien mentioned that he felt that Mr. Arora actually enjoyed starting conflicts with his team. **It was at this time, Mr. Arora responded that he did not enjoy the conflicts but that if he had to defend himself, he would bring pain to everyone. I questioned this comment and Mr. Arora repeated the statement.** (emphasis added)

The meeting continued for a short time with no progress or resolution being made on Mr. Arora's part... Once outside Mr. O'Brien and I had a brief discussion regarding the outcome of this session. We both agreed that Mr. Arora clearing (sic) made a threat towards his colleagues and was unwilling to share any responsibility for the conflict.

14. According to Mr. O'Brien's statement:

... Amit Arora had taken exception to the way in which Jo Petrucha was documenting and cleaning up the cable records for Thornton Yard communications systems. Mr. Arora had challenged Mr. Petrucha on his actions and had gone so far as to report him to there (sic) Supervisor in an attempt to have him disciplined...

The dispute had escalated to the point where Mr. Petrucha felt he was being harassed by Mr. Arora and had stated that he was going to file a complaint with the HR department at CN. The two employees had engaged in a somewhat heated exchange of emails over this matter and had worsen an already difficult working environment in the Surrey Shop.

15. Mr. O'Brien describes how he met with the two protagonists at 13:00 on March 16, 2018, and the following transpired:

Joe Petrucha – ... felt that Mr. Arora's interference was making his job more difficult. He further stated that the actions of Mr. Arora both in person and by e-mail to there (sic) mutual Supervisor and IBEW representative was creating a toxic work environment and constituted harassment;

Amit Arora - Stated that the record keeping Mr. Petrucha was using for the cabling was flawed and had to be changed. He felt that his method was better and should be adopted regardless of the decision that had been made by his Supervisor. He did not believe that his idea had been given proper consideration and was fairly insistent that Mr. Petrucha change the way he was handling the cable records and begin doing it his way.

16. Mr. O'Brien proposed a course of mutual conduct they should engage in, going forward, in order to keep their working relationship at a professional level. Mr. Petrucha agreed and was willing to adopt it. The Grievor refused.
17. Mr. O'Brien notes that Mr. Kich arrived at approximately 14:30 and was brought up to speed. Whereupon he (Mr. Kich) suggested the same approach going forward as had been proposed earlier by Mr. O'Brien. Again, Mr. Petrucha agreed while the Grievor refused.
18. At this stage Mr. Kich stated to Mr. Arora that:

*...it appeared to me that he enjoyed these types of confrontations with his fellow employees and that I didn't understand why he couldn't accept his Supervisor's decision on the cable records. **Mr. Arora then said the (sic) he did not enjoy these confrontations and that it was his only way to defend himself and that if he couldn't do this then he would have to bring a lot of pain to everyone and they would all be sorry.***

(Emphasis added)
19. According to Mr. O'Brien once outside, Mr. Kich "... asked me if that sounded like a threat and I agreed that it did".
20. With that background evidence, I now turn to the Grievor's response.
21. At the outset of the Investigation, on April 25, 2018, the Grievor was asked (Q.5): "*Do you dispute or refute any of the evidence*". In reply, he provided a 2 ½ page response.
22. Referring to the specific threat described by Messrs. Kich and O'Brien, he states:

*It is very disturbing that Mr. Kich in his evidence alleges that I made a threat towards my colleagues and that I responded by stating "I did not enjoy the conflicts, and had I needed to defend myself it would bring pain to everyone". The context of this statement was my dismissal in 2016 where after HR investigated they discovered several procedural errors and I was reinstated back to my job. Bringing pain to everyone I am referring to is my family members, my mom and my daughter. It would bring pain to everyone including myself.*

23. The threats which Mr. Kich and Mr. O'Brien perceived were specifically put to the Grievor. He did not deny them. Rather, he provided the following explanations:

Q.7 *Are you familiar with CROR General Rule A (ix) which states that every employee shall: "conduct themselves in a courteous and orderly manner;"?*

A.7 Yes.

Q.8 *Are you familiar with CN's Workplace Violence Prevention Policy where it states:*

*"CN will not tolerate workplace violence..." and "...workplace violence" is defined as any action, conduct, threat or gesture of a person towards a CN employee in a workplace that can be reasonably be expected to cause harm, injury or illness to the CN employee, excluding situations of justified self-defence."*

A.8 Yes.

Q.9 *In the memorandum from SC Manager Kich, which was included as evidence, he states:*

*"Mr. Arora responded that he did not enjoy the conflicts but that if he had to defend himself, he would bring pain to everyone."*

*In the memorandum from SC Supervisor O'Brien, which was included as evidence, he states:*

*"Mr. Arora then said he did not enjoy these confrontations and that it was his only way to defend himself and that if couldn't do this then he would have to bring a lot of pain to everyone and they would all be sorry."*

*Did you say these statements?*

A.9 *I don't remember saying exactly as stated in the evidence. By saying defend myself again, it will be painful for me and my family that I will have to go through this again only if it is a fair investigation by unbiased people to defend myself. Whenever I bring a complaint forward, I am the one who gets in trouble. So either the Company does not want to hear the truth and the facts, or there is something else underlying.*

...

Q.10 *For the sake of clarity, are you stating that the statement "would have to bring a lot of pain to everyone" was a reference to the pain this situation would bring to your family?*

A.10 Yes.

Q.11 *For the sake of clarity, are you stating that the statement "they would all be sorry" was a reference to the apologies co-workers would make when you get your job back?*

A.11 *Yes, I was referring to the sweeping incident of Mr. Wansheng when he apologized in Mr. Knorr's office for his mocking comment and he said "I'm sorry." What I meant was, why did they make insulting comments and then they say sorry.*

**Start of questions from Presiding Officer to Mr. Terry O'Brien – SC Supervisor**

Q.12 *In the memorandum you provided you state:  
"Mr. Arora then said he did not enjoy these confrontations and that it was his only way to defend himself and that if couldn't do this then he would have to bring a lot of pain to everyone and they would all be sorry."*

*In the statement Mr. Arora has said "would have to bring a lot of pain to everyone" was a reference to the pain the situation would bring his family. And that the statement "they would all be sorry" was a reference to a previous sweeping incident of Mr. Wansheng when he apologized in Mr. Knorr's office for his mocking comment and he said "I'm sorry."*

*Is it possible that you mistook what Mr. Arora meant?*

A.12 *It is not possible. At no time did he mention his family. In the context of the situation we were discussing the interactions he was having with his fellow employees and that this comment was directed towards them. That they were the ones that would feel the pain and feel sorry.*

24. It should be noted - in anticipation of the Union's argument relative to the issue of a fair and impartial investigation - that I have considered the objections raised by the Union following Q.9, and Q.12. On each occasion I find the questions to be appropriate and admissible for, *inter alia*, the following reasons:

- (i) Q. 9 is relevant in that it puts to the Grievor the specific threats he is alleged to have made; provides the basis for the Company's allegations against him; and, affords him the opportunity to explain;
- (ii) Q. 12 as put to Mr. O'Brien, allows the Supervisor to address the Grievor's explanation and provides an opportunity for the Grievor to be apprised, in advance, of the basis for the position which will be taken by the Company at arbitration in opposition to the Grievor's response. On both occasions the questions fall squarely within the principles set out in **CROA 2073**.



25. Turning now to the threats themselves.
26. Initially, the context in which the threats were made are to be considered. I accept the statements of Messrs. Debruyne, Kich and O'Brien as they refer to fact that the Grievor: over-reacted and aggressively pursued Mr. Petrucha concerning the matter of the records; that Mr. Petrucha felt he was being harassed by the Grievor to the point that he was going to file a complaint with HR; that Mr. Petrucha and the Grievor were in a heated exchange over the issue; that the Grievor had a poor working relationship with his co-workers; and, that the threats came during a meeting in which the Grievor had taken an intransigent position singularly denying the prospect of a mediated resolution. Taken as a whole, it is understandable why Messrs. Kich and O'Brien perceived the Grievor's comments as threats.
27. Having considered the circumstances and examined the answers provided by the Grievor (particularly in Q's.7 – Q.11), I conclude that his explanations are simply not credible. A reasonable person would perceive the phrases "*he would bring pain to everyone*" and "*they would all be sorry*", in the context in which they were made, as a threat toward his fellow employees - just as Mr. Kich and Mr. O'Brien did.
28. The fact that the Grievor chose to defend his comments with contrived and calculated rationalizations - as opposed to either a candid explanation (e.g. the comments were made in the heat of the moment) or an apology - only exacerbated the situation and confirms the conclusion that his threats were in fact just that: ... threats.
29. Threats in the nature of those made by the Grievor cannot be condoned in the work place and can be expected to attract discipline. In the present circumstances that reality is confirmed by the *Company's Code of Conduct* (Tab 10) as well as the *CN Work Place Violence Prevention Policy* (Tab 11).

30. Having issued the threat, and then exacerbated the situation by providing a disingenuous fabrication, the Grievor emphasized the fact that his conduct was culpable and deserving of discipline.

### III

#### **Fair and Impartial Investigation**

31. The Union argues that the Grievor was not provided a fair and impartial investigation and requests that the discipline be declared void *ab initio*. I do not agree.
32. A review of the investigation discloses that: the Investigator made all of the evidence in the Company's possession available to the Grievor; that the Grievor or his representative were provided every opportunity to examine the available witnesses; and, that the Grievor was given a liberal opportunity to provide exhaustive answers and statements in his defense, all of which served to ensure that the obligations of the Company, pursuant to the principles of **CROA 2073**, were met.

#### **Piling on / Appropriateness of discipline**

33. The remaining issue is the appropriateness of the discipline of discharge that the Company imposed.
34. The Union argues that the Company's failure to immediately proceed with disciplinary action to address the threats, reveals that its motivation for investigating these allegations was to "*pile on*" the Grievor's disciplinary record (see: AH673 (A) and AH673 (B)) so as to ensure dismissal.

35. I do not agree that the circumstances in the present case constitute piling on with the disciplines imposed and dealt with in arbitrations **AH673 (A) & AH673(B)**. Those cases, as well as the present, deal with three disparate and discrete incidents. All of which were instigated by the conduct of the Grievor himself. They do not constitute a continuum of events which attracted a multiplicity of disciplines. They are separate, disparate and discrete and, in each case, they represented individual culpable conduct deserving of discipline.
36. In addition, the Union argues that, in any event, the delay in proceeding with the investigation and/or disciplinary action on the threats exposes the reality that the Company did not regard them to be serious enough to warrant the immediate removal of the Grievor from the work place and/or immediate disciplinary action.
37. That argument is, in my view, well founded. The Company's delay in either removing the Grievor from the work place or otherwise proceeding with the investigation reflects its assessment of the seriousness with which it regarded his threats.
38. As a review of the jurisprudence reveals, the severity of a threat and the seriousness with which it is regarded can vary; and, accordingly, so should the disciplinary responses.
39. In *Rolland Inc. vs. Canadian Paperworks Union* [1983] 12 L.A.C. 3d 391, Arbitrator McDowell notes:

*... there is a difference between a mere insult, a momentary outburst, and a course of conduct which represents a serious challenge to the authority of the employer and is incompatible with the continuance of a viable employment relationship. The gravity of the situation can vary substantially and so should the disciplinary response. Finally, an assessment of the surrounding circumstances may serve to mitigate, if not fully exculpate, the grievor's offence. One must consider such matters as: the relationship of the two individuals concerns (i.e., superior/subordinate or two rank-and-file employees); whether there was provocation; the presence of absence of a previous good disciplinary record; whether the incident appears to be part of a*

*pattern of intemperate behavior; the grievor's seniority; whether there was an apology; etc.*

40. While I accept that Messrs. Kich and O'Brien viewed the threat seriously, the Company's delay in responding leads me to conclude that it did not regard the threat severe enough to take immediate action. Having considered that fact, the Grievor's threats – in of themselves - do not warrant the Grievor's discharge.

#### IV

#### Decision

41. That said, as reflected both in the jurisprudence and the *Company's Work Place Prevention Policy* and *Code of Business Conduct*, any threat in the nature of that uttered by the Grievor is nevertheless to be taken seriously and is deserving of a significant disciplinary response.
42. After reviewing the jurisprudence, I conclude that a fair and appropriate discipline, in lieu of discharge, in the circumstances here, is 30 demerits.
43. I am aware that, as a result of the preceding decisions in **AH673 (A)** and **AH673 (B)**, the Grievor's current demerit standing is at 50 demerits and that the additional 30 demerits will lead to his dismissal from the Company.
44. I have, at length, pondered the alternative of imposing a last chance suspension in lieu of the 30 demerits and thus preserve the Grievor's job. However, with all due respect for Mr. Arora, his conduct - coupled with his responses in the disciplinary process - have not left me with any reasonable mitigating factors to work with in order to arrive at that goal. He took no responsibility for his actions. He blamed a variety of people, or incidents, for the circumstances in which he put himself. To justify his actions he accused others of misconduct. He harassed Mr. Petrucha. He denied that he was aggressive or agitated. He refused any attempt to mediate the

problem. He denied making the threats. He did not apologize. Finally, rather than apologizing and taking responsibility and acknowledging the need to improve his performance, he provided a contrived and disingenuous rationalization in an attempt to excuse his conduct.

45. Throughout, the Grievor was unwilling to accept responsibility for his involvement in the matter and instead showed a proclivity to reframe the facts in such a fashion as to avoid the consequences of his actions. All things considered – including the circumstances disclosed in the previous two cases heard in conjunction with this one – I am persuaded that Grievor’s repeated course of conduct reflects both an inability to interact positively with his fellow employees and represents a challenge to the authority of his Supervisors which is incompatible with the continuance of a viable employment relationship.
46. For the reasons above, I am unable to make an exception for Mr. Arora or to adjust his penalty to provide him a last chance opportunity. In the circumstances, the assessment of 30 demerits is fair, reasonable and appropriate.
47. Finally, I would be remiss if I did not thank counsel for the exemplary preparation of their respective cases and their thorough and exhaustive representations on behalf of their respective clients.

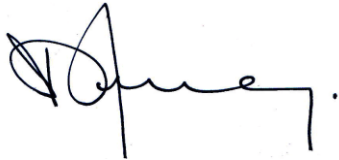
## V

### **Conclusion**

48. The grievance is allowed in part.
49. The discipline of discharge will be set aside and, in its place, the Grievor shall be assessed 30 demerits for uttering of the threats towards his fellow employees as determined herein.

50. I shall retain jurisdiction to deal with the application, interpretation or implementation of this award.

Dated at Calgary, Alberta this 25<sup>th</sup> day of May, 2020.

A handwritten signature in black ink, appearing to read "R. Hornung", with a period at the end. The signature is written in a cursive style.

**Richard I. Hornung, Q.C.**  
**Arbitrator**