

IN THE MATTER OF AN ARBITRATION

BETWEEN

**ALGOMA CENTRAL RAILWAY INC.**

(“the Company” / “the Employer”)

- AND -

**UNIFOR, LOCAL 100**

(“the Union”)

**SHP-724**

CONCERNING THE 17-DAY DISCIPLINARY SUSPENSION GRIEVANCE  
of CAR MECHANIC GREGORY BOCK (“the Grievor”)

Christopher Albertyn - Sole Arbitrator

APPEARANCES

For the Union:

Brian Stevens, National Rail Director Unifor

Ashok Venkatarangam, Vice-President, Great Lakes Region

Gregory Bock, Grievor

For the Company:

Jennifer Darby, Labour Relations Associate

Hearing held in TORONTO on May 17, 2016.

Award issued on June 16, 2016.

**AWARD**

**DISPUTE:**

1. The dispute is whether the 17-day suspension issued by the Company to Car Mechanic Gregory Bock for conduct unbecoming in an altercation with fellow employee F. Allinson on June 25, 2015 was just and reasonable.

**STATEMENT OF ISSUE:**

2. The Statement of Issue reads:

Investigations were held on June 30, 2015 and July 7, 2015, with Mr. Bock for circumstances surrounding an altercation with Fred Allinson on June 25, 2015. Subsequent to the investigation, Mr. Bock was assessed with a 17-day suspension for his conduct unbecoming and involvement in the altercation with F. Allinson.

The Union alleges that the Company has violated Articles 9, 9.01(a), 9.01(f), 9.03 of the collective agreement, the *Canadian Human Rights Act* and the Company's harassment policy and further that the Company failed to investigate Mr. Bock's harassment complaint dated March 5, 2014, involving Mr. F. Allinson.

The Union further submits that the initial Form 780 provided to the grievor advised that the discipline assessed was a 17-day suspension, which the company revised, contending it was an administrative error. The Union is requesting that the grievor be made whole and the record of suspension expunged from his record.

The Company disagrees with the Union's contentions and has declined the

Union's grievance.

**FURTHER FACTS:**

3. The Grievor and Mr. Allinson did not have a good relationship. Mr. Allinson was the leadhand. They quarrelled. From the conflicting statements of the two men, I find the following likely to be what occurred.

4. Around mid-day on June 25, 2015, Leadhand Allinson came out of his office into the washroom area to inquire of the employees about a railway passenger coach that was on the repair track and had been out of service for approximately two weeks. The coach was not cleared to be switched out of the repair shop because it had not yet had the requisite air brake test.

5. The Grievor replied loudly that the buggy had not been repaired because Mr. Allinson, as the Lead Hand, had not yet sent it out for repairs. This was an argumentative and aggressive response to Mr. Allinson's query.

6. Mr. Allinson began to yell at, and insult, the Grievor, calling him a "useless piece of shit". Who approached whom is not clear, though likely Mr. Allinson came right up to the Grievor. Mr. Allinson and the Grievor were standing nose to nose. The Grievor says Mr. Allinson was blocking his movement away. I doubt that was so. The Grievor says that, in trying to extricate himself, his chest bumped Mr. Allinson's. I doubt that too. I find it more likely that, as Mr. Allinson alleges, the Grievor pushed Mr. Allinson's chest, pushing him away

because Mr. Allinson was right up in his face screaming at him and insulting him. I do not accept that the Grievor was trying to get away from Mr. Allinson. Mr. Allinson's glasses, which were hanging around his neck, were bent. This shows the shove the Grievor gave Mr. Allinson was forceful.

7. The incident was over in a matter of moments. I am not persuaded that Mr. Allinson was genuinely concerned for his safety.

8. In its submission, the Union relies on a complaint of harassment by the Grievor against Mr. Allinson in March 2014, which the Union alleges was not investigated. This was well over a year before the incident. I find it has no bearing on my consideration of what occurred on June 25, 2015.

9. What we have are two individuals behaving badly and aggressively towards each other. The Grievor being rude to Mr. Allinson, Mr. Allinson being rude and insulting to the Grievor. The Grievor over-reacts and acts physically, pushing Mr. Allinson away from him. The Grievor himself provoked the incident in the way he answered Mr. Allinson's query, Mr. Allinson escalated it by his yelling and insulting the Grievor, and the Grievor retaliated with physical violence, albeit almost instantaneously.

10. This point is made more clear by the damage to Mr. Allinson's glasses. He was not just shoved by the Grievor; he was struck and pushed forcefully.

11. Mr. Allinson was treated as the victim by the Company, and not

disciplined at all. That is contrasted with the 17-day suspension the Grievor received.

**THE ISSUE:**

12. The issue is whether the 17-day disciplinary suspension issued to the Grievor was fair.

**AWARD:**

13. As has been well-stated in many cases, cited by the Company, violence in the workplace is not to be tolerated. Provocation, as occurred to an extent in this case, helps to explain violent conduct, but it does not excuse it. For all the reasons advanced by the Company in its brief, violence in the workplace is not permissible.

14. The setting for the incident, as the Union alleges, is a robust one. As was said in SHP 712, para. 60, “A railyard is not a tea party. Hard labour in a dangerous environment no doubt carries with it a certain amount of rough language and crude jocularities.” That is the context, but, nonetheless, violence is misconduct.

15. There is unevenness of the discipline between the Grievor and Mr. Allinson, even taking account of the difference between verbal abuse and physical violence. Mr. Allinson was found to be blameless when his insulting comments helped to escalate the situation. Both were to blame for what happened, though the Grievor was more to blame because he started the altercation and he turned a

verbal confrontation into a physical one. His behaviour deserved more discipline than Mr. Allinson, but, in all the circumstances of what occurred, a 17-day unpaid suspension to the Grievor was excessive.

16. I find that the appropriate discipline for the Grievor was a 10-day suspension without pay. I order that discipline to substitute for the 17-day suspension without pay that he received. The Grievor ought to be compensated for loss of earnings for the difference between this order and that discipline. His disciplinary record is to be amended accordingly.

17. The grievance is partially upheld. I remain seized of the implementation.

DATED at TORONTO on June 16, 2016.

A handwritten signature in blue ink, appearing to read 'C. Albertyn', with a horizontal line extending to the right from the end of the signature.

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Christopher J. Albertyn  
Arbitrator