

IN THE MATTER OF AN ARBITRATION
BETWEEN
ALGOMA CENTRAL RAILWAY INC.
("the Company" / "the Employer")
- AND -
UNIFOR, LOCAL 100
("the Union")

SHP-725

CONCERNING THE TERMINATION 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 July 6, 2016.

AWARD

DISPUTE:

1. The dispute is whether the termination on August 27, 2015 of Car Mechanic Gregory Bock (for inappropriate and threatening comments made on February 24, 2015 regarding a Company Officer, P.H., and his wife) was just and reasonable.

STATEMENT OF ISSUE:

2. The parties did not reach agreement on the Statement of Issue. From their submissions, the Statement of Issue reads:

An investigation was held on August 12, 2015 into comments Mr. Bock made in the lunch room on or about February 24, 2015 regarding the medical condition of Company Officer P. H. and his threat of violence against P. H.'s wife.

Following the disciplinary investigation, Mr. Bock was discharged on August 27, 2015.

It is the Union's position 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. The Union further submits that Mr. Bock made no statements as alleged. The Union is requesting that the grievor be reinstated into his position and be made whole for lost wages.

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

FURTHER FACTS:

3. The Grievor is a 29-year employee. He has some discipline on his record over the period of his employment.

4. The offending comment allegedly made by the Grievor on February 24, 2015 occurred in the following context. The Grievor was among other Car Mechanics. They were talking casually. Mention was made that Supervisor P.H. had been diagnosed with cancer. The Supervisor was not popular among the Car Mechanics because he had been a strict enforcer of the rules. Disparaging comments were made when this news was announced. Someone said, "Karma sucks". Another said he would send a get well card to P.H. and added, "Not!" Finally, presumably to top the others in his contempt for the Supervisor, the Grievor is alleged to have made a comment along the following lines, "H's got cancer?! Looks good on the cocksucker! I think I'll go fuck his wife and video it and then give it to him on his deathbed!"

5. I have taken this statement of what the Grievor is alleged to have said from a witness who had no particular antipathy towards the Grievor and was asked by management, during the investigation, of what he had heard. This witness had not come forward to report the comment at the time it occurred.

6. As part of the Company's investigation, other workers present when the Grievor's comment was allegedly made were asked what they could recall of

what the Grievor had said. They could not recall him having made the comment.

7. The Grievor vehemently denies making the comment. He said that the issue of cancer is personal to him because his father died of cancer and he has siblings with cancer, and he would never make such a comment.

8. The report of the comment occurred five months after it was made, on July 21, 2015.

9. The Company became aware of the offending comment from it being reported to the Company by the Car Mechanic Leadhand, F. Allinson. There was much antagonism between Mr. Allinson and the Grievor at the time. Some of this antagonism is described in SHP-724. That decision should be read in conjunction with this to appreciate the context. An incident between the two men, described in that decision, occurred on June 25, 2015. As a result of that incident and the investigation into it, the Grievor was issued with a 17-day unpaid disciplinary suspension.

10. The period of suspension ended on July 21, 2015 and the Grievor returned to work on July 22, 2015. That is when Mr. Allinson chose to make his report of something that had occurred on February 24, 2015, nearly five months earlier. His explanation for making the report so late is that he became concerned for his safety after the incident described in SHP-724, and the February comment then acquired significance for him.

11. On July 23, 2015, the day after the Grievor returned to work, another Car Mechanic, Robert Vachon, went to management and asked that he not be required to work with the Grievor because he was scared to work with him. Apparently he had filed a harassment complaint against the Grievor four years earlier, in 2011. Whether this was a genuine complaint I am not able to determine. However, I would not be surprised if, upon investigation, it were found that there was collusion between Car Mechanic Vachon and Mr. Allinson regarding this request. I take from their reports to management that they hoped that management would take action against the Grievor, preferably to have him removed from the workplace.

12. At the investigation into the complaint, the Grievor said he saw the allegation against him as being a fabrication by Mr. Allinson to put his job in jeopardy.

13. There is a long history of animosity between the Grievor and Mr. Allinson. Back to 2009 there have been complaints to management by each of them of harassment by the other.

THE ISSUE:

14. The issue is whether the termination of the Grievor was for just cause.

DECISION:

15. The first matter is to determine whether, on a balance of probability, the Grievor made the alleged comment. Mr. Allinson said he heard it, and one other

witness corroborated it. Others present at the time did not recall the statement being made. The Grievor denies it.

16. There is a possibility, as the Grievor alleges, that Mr. Allinson fabricated the comment. I cannot be certain that is not so. A few of the fellow employees who were present when the statement was allegedly made had no recollection of it. I am also not persuaded of Mr. Allinson's explanation for why he did not report the comment at the time, but waited some five months to do so.

17. However, although I have only limited knowledge of the relationship between the car mechanics in Sault Ste. Marie, from the statements provided by the parties in their briefs, the corroboration of what Mr. Allinson claims is from an individual who does not appear to have animosity towards the Grievor. For this reason I find, on balance, that it is more likely than not that the Grievor did make the comment. Therefore I find that management correctly determined that the Grievor likely did make the statement, despite his strong denial.

18. There can be no doubt that the comment was vicious and nasty. Whatever the Grievor felt towards P.H., there was no justification for such spitefulness. The question, though, is whether the comment was such as for the Employer reasonably to conclude that the Grievor posed a risk of violence to P.H. and his wife, justifying his termination.

19. I am not persuaded that is the case. Mr. Allinson went to management with the complaint, claiming that he felt unsafe working with the Grievor. I find

no truth in this. Given the context of the relationship between the two men, and particularly the circumstances described in SHP-724, I find that the complaint was malicious and retaliatory, intended only to harm the Grievor, as the Union alleges.

20. The Company's case was built around the threat of violence that the Grievor posed as a consequence of the comment. The context of the comment is all important. The car mechanics were showing off to each other how much they each hated P.H. It was a childish, stupid exercise, but that is what they were doing. The Grievor had to top it all with an even more contemptuous comment, as described. He was showing off how much more he hated P.H. than did the others. There was no realistic threat of violence, otherwise Mr. Allinson or others would have reported it at the time.

21. Neither Mr. Allinson, nor the other employee who remembered the comment, thought it necessary to say to the Grievor at the time that his comment was inappropriate and unprofessional. I draw the conclusion from this, and from their failure to report the comment to management, that the comment was intended and understood to be part of the nasty banter between the car mechanics, and it was not meant or understood to be an expression of something seriously intended. The matter was forgotten until July 21, 2015, when the Grievor returned to work following his disciplinary suspension and Mr. Allinson saw an opportunity to pile on the trouble the Grievor faced from management.

22. Actual threats of violence must be taken very seriously, as the Company contends. This is not to say that the Grievor's conduct in February 2015 was

acceptable in a workplace. Far from it. It was reprehensible, particularly as he has not admitted it and acknowledged the wrongfulness, nastiness and inappropriateness of what he said. But it was not a threat of violence and there could be no reasonable belief that P.H. or his wife was at any safety risk as a consequence of it.

23. The Grievor ought to be disciplined for making such a vicious and inappropriate comment and for refusing to acknowledge that he has done so, but he should not be disciplined for threatening violence, as he was.

24. The Grievor is a long-serving employee, with 29 years seniority and with limited relevant discipline on his record. Although I find his comment to have been most offensive, I am not persuaded that he poses a threat of violence in the workplace or that this conclusion should reasonably have been drawn from what occurred. I am therefore not persuaded that the employment relationship between the Grievor and the Company has reached such a state of deterioration that it cannot be restored and that he cannot learn to abide by the reasonable rules of civility between employees that should be expected of him.

25. Having regard to the above, the Grievor is reinstated in employment without loss of seniority, but without compensation.

26. The grievance is therefore partially upheld.

27. The Union commented at the close of the hearing of the need for some

workplace restoration between the 12 car mechanics represented by the Union in Sault Ste. Marie. I agree. The evidence reveals much antipathy between them, particularly as regards the relationship between Mr. Allinson and the Grievor. That is a matter left to the parties.

28. I remain seized of the implementation of the award.

DATED at TORONTO on July 6, 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.

Christopher J. Albertyn
Arbitrator