

IN THE MATTER OF AN ARBITRATION

BETWEEN

CUDDY FOOD PRODUCTS

- the Employer

and

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION,
LOCAL 175

- the Union

AND IN THE MATTER of a grievance of Robert Sneddon

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

W. Jason M. Hanson	- Counsel
Mark Bossy	- Human Resources
Adrean MacDonald	- Supervisor

On behalf of the Union:

Georgina C. Watts	- Counsel
A. G. Sherman	- Business Representative
Robert Sneddon	- Grievor
Gord Gripp	- Chief Steward, Plant A
Hanna Baddaoui	- Chief Steward, Plant B
Betty Pardy	- Chief Steward, Plant C

Hearings held in London, Ontario on April 21, and August 30, 1995.

AWARD

I. INTRODUCTION

On Friday September 23, 1994 Robert Sneddon (the grievor) and Cham Roeun Tang, a fellow worker, were involved in an incident while at work. The incident was investigated by the two workers' respective supervisors and in due course both the grievor and Mr. Tang were disciplined for the incident. Both participants received three (3) day suspensions, and both initially grieved their suspensions. Mr. Tang later withdrew his grievance. The grievor pursued his grievance - it is the subject of this decision.

Article 10 of the parties' Collective Agreement includes the usual provision that discipline can only be imposed for just cause. I am to assess the Employer response to the incident using this standard.

The Union submitted that the grievor was defending himself and that, as his conduct was in essence self defence, there should be no discipline. Alternatively, the Union asserted that the grievor was much less involved and much less responsible or less culpable for the incident than was Mr. Tang, and that the grievor thus deserved less discipline than Mr. Tang. As they had both received the same discipline, the Union submitted that the discipline imposed on the grievor should be reduced.

II. THE INCIDENT

Most of the hearing was taken up with a careful review of the events of September 23, 1994, and the subsequent investigation. There were three main witnesses. The grievor, Mr. Tang and the grievor's supervisor, Adrean MacDonald, each testified as to the events. The testimony of the three witnesses differed on many of the details of the events.

The following is a brief review of the facts. Late on the afternoon of September 23, the grievor and Mr. Tang were the only two workers who remained in their area of the plant. They were to clean up and put away the product. The incident started as the grievor was moving a tow motor through a relatively narrow passage on the plant floor at the same time that Mr. Tang was moving a cart through the same passage. There was agreement that the grievor pushed Mr. Tang's cart out of the way causing Mr. Tang to be moved some distance, although there was disagreement regarding the details of the pushing.

The grievor then smiled or laughed at Mr. Tang and Mr. Tang became angry and upset. Matters did not stop then. There was at least one further encounter between the two. Suffice it to say that matters escalated. The grievor agreed that at one point he made a gesture at Mr. Tang which was described as a "crazy" gesture, that is a gesture intended to suggest that the grievor thought that Mr. Tang was crazy. The grievor acknowledged that in an encounter he grabbed Mr. Tang by the collar. In a written statement which the grievor prepared for the Union at about the time of filing the grievance, the grievor said that when he grabbed Mr. Tang he threatened to "...punch his [Mr. Tang's] lights out." In their testimony before me both the grievor and Mr. Tang recalled the words differently but they both agreed that there was a suggestion of further fighting. Mr Tang, for his part, threw a "handle knife" at the grievor. Later, the two clearly waved at one another with a shovel (the grievor) or a paddle (Mr. Tang), although the grievor says he was defending himself.

Throughout this period, which lasted perhaps 15 minutes, I conclude the grievor intermittently smiled (his word) or laughed (the word used by the grievor in his written statement and used by Mr. Tang) at Mr. Tang. However one describes the grievor's conduct, and considering his gesture, I have no doubt that the grievor was aware that he was annoying Mr. Tang. Nevertheless, the grievor deliberately continued to annoy Mr. Tang.

On the following Monday the grievor's supervisor, Adrean MacDonald, interviewed the grievor and prepared a report. In her report Ms MacDonald concluded, among other things, that the grievor had laughed at Mr. Tang and that he had grabbed Mr. Tang by the lapels.

By letter dated October 5, 1994, Ms MacDonald imposed a three day suspension on the grievor for his actions on September 23. The letter states that "...you were involved in a physical altercation with a fellow employee in which you grabbed this employee in a threatening manner ... the Company can not and will not condone violence in the workplace...".

During the hearing Ms MacDonald testified that she relied on what the grievor had told her in reaching her decision to impose the discipline and she repeated that, in her view, physical violence should not be tolerated in the workplace.

I heard considerable other evidence but I do not find it necessary to recount it all or endeavour to arrive at findings of fact as to exactly what else took place. The key events are set out above.

III. ARGUMENT

The Employer submitted that there were two ways to approach the facts. One approach was to deal only with what was in essence admitted by the grievor - that he grabbed Mr. Tang and that he laughed or taunted Mr. Tang. The Employer submitted that Ms MacDonald had acted on that basis and that I should as well. The Employer made an alternative argument dealing with the credibility of the witnesses and what factual conclusions I should reach, in case I found it necessary to make comprehensive findings of fact.

On the substance of the grievor's conduct and the Employer discipline, the Employer submitted that the physical violence justified discipline and that this was not a case in which I should attempt to fine tune the particular discipline imposed.

The Employer relied on *Re Rolland Inc. and Canadian Paperworkers Union, Local 310* (1983), 12 L.A.C. (3d) 391 (MacDowell); *Re Dominion Glass Co. and United Glass & Ceramic Workers, Local 203* (1975), 11 L.A.C. (2d) 84 (Linden); *Re Allied & Technical Workers, District 50, and Liquid Carbonic Canada Ltd.* (1972), 24 L.A.C. 309 (Weiler); *Re Bombardier Inc. (Group Canadair) and Association Internationale des Machinistes et des Travailleurs de l'Aerospatiale, Lodge 712* (1993), 32 L.A.C. (4th) 201 (Frumkin); *Re Cott Beverages Inc. and Teamsters Union, Local 938* (1992), 28 L.A.C. (4th) 257 (Haefling); and *Re Ontario Store Fixtures and United Brotherhood of Carpenters & Joiners of America, Local 1072 (Phinn)* (1993), 35 L.A.C. (4th) 187 (MacDowell).

The Union submitted that the grievor acted in self defence, that he did nothing wrong, that his actions were not culpable, that he should bear no responsibility for any of the incident and that he should, therefore, receive no discipline. In the alternative, the Union submitted that the grievor was less culpable or less blameworthy than Mr. Tang and that as a result I should exercise my discretion to modify the penalty imposed on the grievor. The Union also made submissions on the credibility of the witnesses and as to what findings of fact I should reach in resolving all the differences in the testimony.

The Union relied on *Re Scarborough Centenary Hospital Association and Canadian Union of Public Employees, Local 1320* (1982), 6 L.A.C. (3d) 214 (Little); *Re Home Hardware Stores Ltd. and Home Hardware Employees Association* (1984), 20 L.A.C. (3d) 76 (Jolliffe); and *Re Ontario Store Fixtures (supra)*.

IV. CONCLUSIONS

In my view, this is a fighting case which turns largely on the facts.

While there were a number of factual points on which the evidence differed, I have concluded that it is not necessary for me to resolve those issues. The grievor admitted several key points and I have expressed my conclusions on those other points which I regard as important to a resolution of the grievance. I express no conclusion on those other factual disputes which are not, in my view, necessary to a resolution of the grievance.

A resolution of this grievance requires me to address the following three questions.

1. *Does the grievor's conduct merit any discipline?* I find that the grievor participated in a physical altercation with Mr. Tang (in fact the grievor admits it). I conclude that the grievor smiled (or laughed) at Mr. Tang and made one or more rude or mocking gestures at Mr. Tang, actions which I believe were designed or intended to annoy or taunt Mr. Tang, and that the grievor grabbed Mr. Tang and pushed him. Further I conclude that when the grievor grabbed Mr. Tang he intended to and did frighten Mr. Tang and that he intended to and did convey that there could be more physical violence.

I agree with other arbitrators who have stated that violence is not acceptable in a workplace (see, for example, *Re Dominion Glass (supra)*). I have no hesitation in concluding that the grievor's conduct in taunting and then in grabbing Mr. Tang, *absent some unusual or extraordinary explanation*, was deserving of discipline.

2. *Is there an unusual explanation that justifies the grievor's conduct?* The Union argued that the grievor was acting in self defence and relied on *Re Scarborough Centenary*

Hospital Association, supra. The Union submitted that the grievor was therefore not at all culpable and as such should not receive any discipline.

While I accept that an employee may act in self defence, and may be involved in an altercation but not be culpable, in my view this was not such an occasion. The grievor admitted to pushing Mr. Tang's cart in the initial confrontation. In addition, I have concluded that he knowingly smiled or laughed and gestured at Mr. Tang intending to annoy or taunt Mr. Tang. Of even greater importance, the grievor testified that when Mr. Tang threw the handle knife from a distance of some ten feet, the grievor then walked over to Mr. Tang and grabbed him. While the grievor's version of events differed from Mr. Tang's, I am unable to conclude, even accepting the grievor's version of events, that walking over to Mr. Tang and grabbing him was done in self defence. Moreover, I am of the view that the grievor was very much involved both in starting the incident and in prolonging it. As a result, I do not find that the grievor was blameless for his actions, and in particular I do not find him blameless for his taunting and his grabbing of Mr. Tang. I thus conclude that there is no unusual explanation which makes the grievor blameless so as to make discipline unwarranted. I conclude that the imposition of some form of discipline is warranted.

3. *Should the form of discipline be modified?* The Union submitted that the grievor was much less culpable than Mr. Tang and that I should thus reduce the penalty given the grievor. I have given this submission careful consideration but have decided that this is not a case in which I should exercise a discretion in favour of the grievor. There are several reasons for this which I set out below.

- a) First, I think a penalty of three days for taunting and fighting is not excessive. I believe the Employer can and should provide a clear signal to the grievor, and to his fellow workers, that taunting and fighting is not acceptable behaviour in the workplace.

- b) Secondly, I simply do not think that the grievor was much less culpable than Mr. Tang, as was submitted by the Union. While Mr. Tang approached the grievor in their subsequent encounter(s) on September 23, it was in large part in response to the actions and taunting of the grievor. Mr. Tang's action was, in my view, the sort of response which the grievor intended or hoped to provoke from Mr. Tang, or at the very least was the type of response the grievor should have known was likely to occur. Later, the grievor was also very deliberate in his walking over to Mr. Tang, in grabbing Mr. Tang and in inviting or threatening a continuation of the physical violence.
- c) Thirdly, in my view one of the important roles of workplace discipline is to cause workers to modify their workplace behaviour. In his testimony the grievor did not appear to have accepted that he had an important role to play in the incident and he did not express any regret or remorse. I do not think the grievor accepts any responsibility for the events. I heard nothing which suggests that the grievor is likely to act differently as a result of this incident or this discipline. If I were to reduce the discipline I would think it even less likely that the grievor would learn anything from the incident or conduct himself differently in the future.
- d) Fourthly, I do not think that this is a case in which I should attempt to fine tune discipline by making careful comparisons with Mr. Tang. At the most basic, as noted in point a) above, I find the three day suspension to be within the range of a reasonable Employer response. While I, of necessity, heard much evidence about Mr. Tang and his actions, the details of Mr. Tang's discipline and grievance were not before me for a decision, nor do I have his complete record. There may have been other factors which the Employer took into consideration in imposing discipline on Mr. Tang, factors about which I know nothing. As a result I have concluded that this is not an appropriate case

to try and compare the two participants and fine tune discipline. The situation might be different if I believed that the discipline which was imposed on the grievor was inappropriate or excessive but, as noted, I do not.

In light of these considerations, I do not find any basis for modifying the penalty imposed on the grievor.

In summary, I conclude that the conduct of the grievor merited discipline and I find no reasons which prompt me to vary the particular form of discipline imposed. The grievance is, therefore, dismissed.

Dated in London, Ontario, this _____ day of September, 1995.

Howard Snow, Arbitrator