

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 420

Heard at Montreal, Tuesday, September 11, 1973

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

That the five-day suspension assessed employee K.G. Troendle, Winnipeg, be rescinded and he be reimbursed his normal wages for the period of the suspension.

JOINT STATEMENT OF ISSUE:

After completion of its investigation, the Company found employee Troendle responsible for a mishap which occurred on December 5, 1972. The Union contends the Company did not assume sufficient responsibility for the vehicle movements which Mr. Troendle was required to make.

The Company contends that, as Mr. Troendle is employed as a professional driver, he must accept responsibility for his errors while operating Company equipment.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) L. M. PETERSON (SGD.) C. C. BAKER

GENERAL CHAIRMAN DIRECTOR, LABOUR RELATIONS AND PERSONNEL

There appeared on behalf of the Company.

C. C. Baker – Director, Labour Relations & Personnel, Vancouver

And on behalf of the Brotherhood:

L. M. Peterson – General Chairman, Toronto

G. Moore – Vice General Chairman, Toronto

F. C. Sowery – Vice-General Chairman, Montreal

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AWARD OF THE ARBITRATOR

The grievor was suspended for five days as the result of an accident in which he was involved at the premises of a customer. The issues are first, whether the grievor was subject to discipline at all over the event in question and second, if so, whether a five-day suspension constituted an appropriate penalty.

The accident occurred as the grievor drove his tractor-trailer out of the warehouse of the Company's customer. The warehouse has separate entrance and exit doors, each controlled by electric eye devices. In the case of the entrance door, the electric eye control is outside the building, while for the exit, it is inside. The controls may also be manually operated. Because of the size of the grievor's vehicle, it could not use the exit

door, and had to go out by way of the entrance.

On the occasion in question, another employee, driving a similar vehicle, operated the entrance door mechanism and drove out the entrance of the warehouse. After this employee had driven past the electric eye controlling the entrance door, the door began to close. Neither employee had sought to have a warehouse employee control the door, as it was after 5.00 p.m.

The grievor, in his tractor-trailer, followed the other truck out the entrance doorway. He was unaware that the passage of the first truck past the electric eye would cause the door to descend, and that he should have ensured the door would be opened for his own unit individually. He had proceeded part way through the entrance when the trailer struck the descending door, causing considerable damage.

In my view, the accident must be attributed primarily to carelessness on the grievor's part. While specific instructions to operate the door for each unit individually had not been given, common sense and ordinary experience would alert the grievor to the fact that electronically-operated doors go down as well as up. While it would be expected that there would be a beam at the doorway itself which, broken by a passing vehicle would cause the door to remain open, it should be obvious that where one vehicle has passed, the door may begin to descend before a second vehicle can do so. Even where the second vehicle is able partially to pass the entrance (as it seems the grievor's tractor was able to do), there is an obvious risk that the descending door would be struck by any higher rear portions of the vehicle, and of course in this case that is what happened – the higher trailer, pulled by the grievor's tractor struck the descending door. It would seem that the grievor tried to "run" the entrance, which had been opened by the previous driver. This was an obviously risky practice, and constitutes carelessness in the operation of a tractor-trailer.

In my view the grievor was properly subject to discipline over this incident. While a five-day suspension would appear at first to be a severe penalty, when it is considered in the light of the grievor's disciplinary record, it is my view that it did not go beyond the range of reasonable disciplinary responses to the situation. Within the preceding eight months the grievor had been first reprimanded, then severely reprimanded and then suspended for three days, all for offences relating to the proper operation of his unit.

Having regard to the foregoing I find that the discipline imposed was justified, and the grievance is accordingly dismissed.

(signed) J. F. W. WEATHERILL

ARBITRATOR