

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 728

Heard at Montreal, Tuesday, November 13, 1979

Concerning

CANADIAN PACIFIC EXPRESS LTD.

and

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

EX PARTE

DISPUTE:

The dismissal of employee R. Bowen, Ottawa, Ontario, following investigation for alleged violation of Vehicleman's Rules 1 and 2.

EMPLOYEE'S STATEMENT OF ISSUE:

January 30, 1979, employee R. Bowen, Vehicleman, Ottawa, Ontario, was charged under Vehicleman's Rules 1 and 2 of the Company Rule Book, and further assessed ten demerits which resulted in his dismissal.

The Brotherhood contends the demerits were not warranted and requested the Company to expunge the demerits from his record, reinstated to the position he held at time of suspension and further he be reimbursed all monies lost while suspended.

The Company has declined the Union's request.

FOR THE EMPLOYEE:

(SGD.) J. J. BOYCE

GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. R. Smith	– Director Labour Relations & Administration, Toronto
J. L. S. Brunnelle	– Regional Manager, Montreal
S. J. Samosinski	– Labour Relations Officer, CP Rail, Montreal
B. D. Neil	– Manager, Labour Relations, Toronto

And on behalf of the Brotherhood:

J. J. Boyce	– General Chairman, Toronto
J. Crabb	– Vice General Chairman, Toronto
F. W. McNeely	– General Secretary Treasurer, Toronto

AWARD OF THE ARBITRATOR

Rules 1 and 2 of the "Vehiclemen's Rules", of which the grievor was aware, are as follows:

1. When leaving vehicle unattended, ignition key must be removed and rear doors must be locked.
2. Rear doors are to be kept locked at all times except when loading or unloading.

On the day in question the grievor, in the course of making a delivery, parked at the rear of a small plaza in Ottawa. He opened the rear door, took a parcel for delivery, and went into the building where the delivery was to be made. As he went in, he noticed that the Vehicle Supervisor had arrived at the site, apparently to perform a "spot check". The two men did not speak, however, and the grievor made his delivery, leaving the rear doors of his vehicle unlocked.

The grievor, in a written statement submitted by the Union (apparently for the first time) at the hearing, alleges that the supervisor "stole" a parcel from the vehicle. It may be that the supervisor did remove a parcel for the purpose of demonstrating to the grievor that parcels could easily be stolen from a vehicle left unlocked. Certainly the supervisor did not in fact steal a parcel. It may also be noted that that gesture, if it occurred, did not prove much. It does not appear that there would be any other person in the vicinity, in the time available, likely to remove anything from the vehicle.

Rule 1 must of course be read together with Rule 2. It is not an absolute requirement that doors always be locked. They must be locked when the vehicle is left "unattended" but they need not be locked "when loading or unloading". At the time in question, the grievor was unloading the vehicle, making a delivery. Whether he left it "unattended" is questionable. The vehicle was parked in a lane, about two feet from the door through which the delivery was made. The door was in a long windowless wall, in which there were the rear doors of other stores, but there is no evidence as to the nature of the traffic at that spot or as to any other circumstances which would make the leaving of the door unlocked while the delivery was made more or less hazardous. More particularly, there is no evidence as to the length of time taken by the grievor to make the delivery.

The grievor seems to have felt that the vehicle was not "unattended" because the supervisor was there. That is, in a sense, true, but the grievor did not check with the supervisor to be sure he would keep an eye on the vehicle, and he was not aware of the supervisor's presence until he was on his way into the building.

Comment must also be made on the conduct of the investigation which, according to the grievor's statement, was improper in that the officer conducting the investigation did not accurately record the grievor's responses to his questions. Whatever may have been the case with this particular investigation, it is not the investigating officer's job to "accept" or "reject" answers, but simply to record them as they are given. Otherwise the statement which results is not one which the employee can properly be asked to sign.

In the instant case, the onus being on the Company to show that an offence has been committed, I am not satisfied that that onus has been met with respect to the particular circumstances of this case. It has not been shown that there was just cause for the assessment of 10 demerits. The grievor, however, sought to have previously assessed demerits removed as well. Those matters cannot properly be the subject of the instant grievance. Past instances where discipline has been imposed and not removed through the grievance procedure cannot be reopened, any more than past occasions when discipline might have been imposed but was not can be relied on by the Company as an occasion for discipline later. It should be added that the material before me does not establish that the grievor has been improperly discriminated against by the Company.

For the foregoing reasons the grievance is allowed. It is my award that the 10 demerits in question be removed from the grievor's record. It is noted that this will have no necessary effect on the grievor's employment status.

(signed) J.F.W. WEATHERILL
ARBITRATOR