

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 976

Heard at Montreal, Tuesday, September 14th, 1982

Concerning

### CANADIAN PACIFIC EXPRESS LIMITED

and

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

#### DISPUTE:

The assessing of fifteen demerits to employee J. Hunt, Cambridge, Ontario, for unsafe operation of tow motor.

#### JOINT STATEMENT OF ISSUE:

November 6, 1981, employee J. Hunt, was involved in a tow motor accident and consequently assessed fifteen demerits which resulted in accumulation of over sixty-five demerits.

The Brotherhood maintains the assessing of discipline was not warranted and requested they be expunged from his record, he be reinstated and paid all wages due him while out of service.

The Company declined the Brotherhood's request.

#### **FOR THE BROTHERHOOD:**

#### **FOR THE COMPANY:**

**(SGD.) J. J. BOYCE**  
GENERAL CHAIRMAN

**(SGD.) D. R. SMITH**  
DIRECTOR, INDUSTRIAL, RELATIONS, PERSONNEL & ADMINISTRATION

There appeared on behalf of the Company:

D. R. Smith – Director, Industrial Relations, Toronto  
B. D. Neill – Manager, Labour Relations, Toronto  
P. E. Timpson – Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J. J. Boyce – General Chairman, Toronto  
J. Crabb – General Secretary-Treasurer, Toronto  
M. Gauthier – Vice-General Chairman, Toronto

## AWARD OF THE ARBITRATOR

At the hearing of this matter, the Union alleged that there had been no investigation of the matter, as required by Article 8.1 of the Collective Agreement. That Article is as follows:

**8.1** An employee shall not be disciplined or dismissed until after a fair and impartial investigation has been held and the employee's responsibility is established. An employee may be held out of service for such investigation for a period of not more than 5 working days and he will be notified in writing of the charges against him.

There is, it will be noted, no reference to this in the Joint Statement of Issue, which raises only the question of the merits of the Company's action in assessing discipline. The fact that no investigation in the form of the taking of the traditional question and answer statement was held, was the subject of correspondence between the parties in the course of the grievance procedure. It has not been made the basis of the dispute submitted to arbitration.

In any event, it is clear that the matter was investigated, and that the grievor was aware of the action for which his accountability was in question. This investigation was held by the Safety Committee, of which a Union Representative was a member. Both the grievor and another employee, injured in the accident, were present. Whether or not the Union Representative concurred in any recommendation to assess discipline, the matter was in fact investigated, and the grievor had the opportunity to be heard. Whether or not an employee's responsibility is "established" at an investigation, the question at arbitration, of course, is whether or not there was just cause for the disciplinary action taken, and that is the issue before me in this case.

The grievor, who first worked for the Company in May, 1979, became a full-time employee in September, 1980. His classification was that of Warehouseman. On Friday, November 6, 1981, he was operating a forklift in the Cambridge Terminal. At approximately 0140 hours, while attempting to make a turn into a trailer, he backed into a doorway to position himself. He took too wide a swing, and pinned a fellow employee between the back of the towmotor and the edge of a steel power conveyor. The other employee suffered injuries to his right leg and knee which required medical treatment.

It would appear from the accident investigation report (which the Union Representative did not sign), that the injured employee was criticized for unloading skids on the dock edge of the power conveyor especially, it was said, when a tow motor was working nearby. That, of course, did not relieve the grievor of his responsibility to be aware of other employees working in the area where he was manoeuvring his vehicle. Where, as in this case, an employee has been pinned between the back of a tow motor and a conveyor, the facts speak for themselves, and unless there were some strange circumstances which could explain that the incident was somehow not the grievor's fault (as no such circumstances have been suggested), then the obvious conclusion is to be drawn.

The grievor was, I find, careless in the operation of the forklift, and was subject to discipline therefore. In the circumstances of this case, I do not consider that the assessment of fifteen demerits was excessive. The grievor had been disciplined on four previous occasion in the same year, for offences involving carelessness or unsafe acts, and at least one of these also involved personal injury.

For the foregoing reasons, the grievance is dismissed.

**(signed) J. F. W. WEATHERILL**  
ARBITRATOR