

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1043

Heard at Montreal, Tuesday, March 8th, 1983

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

DISPUTE:

The dismissal of employee R. Braid, Vehicleman, CP Express, Windsor, Ontario.

JOINT STATEMENT OF ISSUE:

April 30, 1982, employee R. Braid, was assessed sixty demerits for violation of Company Rule 11C "Withholding Company Funds". Failure to turn in collect delivery money of \$40.72 which, in turn, terminated his service with the Company.

The Brotherhood grieved the dismissal and requested he be reinstated with full seniority and reimbursed all monies lost while held out of service.

The Company denied the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. R. SMITH
DIRECTOR, INDUSTRIAL RELATIONS,

There appeared on behalf of the Company:

D. W. Flicker	– Counsel, CP Limited, Montreal
D. R. Smith	– Director, Industrial Relations, Personnel & Administration, Toronto
B. D. Neill	– Manager, Labour Relations, Toronto
A. Hill	– Terminal Manager, Windsor
K. Rankin	– Manager, P&D, Toronto
J. W. McColgan	– Labour Relations Officer, CP Rail, Montreal
P. E. Timpson	– Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

Dave Watson	– Counsel, Toronto
J. J. Boyce	– General Chairman, System Board of Adjustment No. 517, Toronto
G. Moore	– Vice General Chairman, Toronto
J. Crabb	– Vice General Chairman, Toronto
M. Gauthier	– vice General Chairman, Toronto
R. Braid	– Grievor

AWARD OF THE ARBITRATOR

Except in one vital respect, there is no dispute as to the facts. On March 9, 1982 the grievor, a Vehicleman, delivered a shipment to a consignee and collected payment for the shipping charges. He marked the waybill "paid" (it was marked as a "collect" bill), and left a copy with the consignee. The consignee's copy, produced at the hearing shows the indication "paid" as a carbon copy, and I conclude that the grievor (as would be proper) made the notation on his own copy, creating the carbon copy at the same time. The notation bears the grievor's initials.

The grievor, contrary to instructions (and to common sense), placed the money in his wallet, together with money of his own. There was some \$200.00 of the grievor's own money there, being the amount of a rent collection he had made in respect of some property he owns.

The grievor did not enter the collection on the collection sheet, on which such matters are recorded. This was, it seems, the only collect delivery made that day. The grievor did turn in a collection sheet, but it was blank. The grievor did not turn in the money collected.

The Company's own accounting and control procedures did not reveal this shortage. They came to light when the consignee was billed for the shipping charges. I do not think that that was inevitable or that the argument to the effect that the grievor could not deliberately have kept the money because he would have known it would come to light is very strong.

The only substantial dispute in this matter is whether or not the grievor deliberately retained the money collected, or whether, as he maintains, he simply forgot about it. In my view, the proper conclusion to be drawn in the circumstances of this case is that the grievor acted knowingly. Even if it were thought that he did not formulate a deliberate plan to steal, his complete disregard for the care of his employer's funds was so clearly wrong as to justify the assessment of sixty demerits in any event.

It is true that the grievor had a substantial sum of money in his wallet, and that the Company's funds might not at first be particularly noticeable when mixed therewith. The large sum of money, however, was there by virtue of a rent collection, and would be precisely identifiable. On making even the most rudimentary accounting of his own funds, the grievor could not fail to notice the amount of the collection in question, which was about \$40.00. The grievor of course, had his own copy of the waybill on which (as I find) he had noted a receipt for payment. On making his report at the end of his run, that ought certainly to have reminded him of the payment to be accounted for. Even apart from that notation it is to be remembered that the waybill itself was marked "collect".

The grievor maintained that he did not have a Driver's Rule Book (although it seems one had been issued to him) and that he had not been instructed as to the procedures to be followed. He certainly knew, however, that cash collected from a consignee was the property of the Company, and he had the waybill and the collection sheet. It requires no rule book to make it clear that the Company's funds are to be paid over to it and not retained or forgotten about.

For the foregoing reasons it is my conclusion that the grievor did improperly withhold Company funds, and that he was subject to discipline on that account. The assessment of 60 demerits was appropriate. Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR