

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1082

Heard at Montreal, Tuesday, May 10, 1983

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED

and

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

DISPUTE:

Claim that 10 Demerits issued Mr. K. Binks account incident November 16th, 1982 is excessive and should be removed from the file.

JOINT STATEMENT OF ISSUE:

Mr. K. Binks accelerated to pass vehicle, vehicle being overtook operated by CPX.

Driver of other vehicle reported C.P.T. vehicle exceeded speed limit. Union requested demerits be removed.

Company declined.

FOR THE BROTHERHOOD:

(SGD.) R. WELCH
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) N. W. FOSBERY
DIRECTOR LABOUR RELATIONS

There appeared on behalf of the Company:

N. W. Fosbery – Director Labour Relations, Toronto

And on behalf of the Brotherhood:

P. Rouillard – Vice-General Chairman, Vancouver

P. Vermette – Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

While it was contended that the grievor was not properly identified as the driver of the vehicle which passed the CP Express driver who reported the incident, there is no substantial doubt on that point. The CP Express truck was passed at about 2:25 p.m., by a CP Transport flat truck on Stewardson Way, near the Queensborough Bridge. The grievor was driving a CP Transport flat truck in that area at that time, and there is no suggestion that there was another such vehicle in that area at that time. As the grievor himself acknowledged, "I may have been doing between 40 and 45 mph when I passed the Express truck ...". There is, I find, no doubt that the grievor was driving in excess of the posted speed of 50 kilometres per hour.

If this had simply been a short burst of excessive speed in order to pass another vehicle, the matter would not be one for discipline, even if a technical breach of the rules had occurred. From the material before me, however, the grievor passed a vehicle which itself was travelling slightly in excess of the speed limit, and the grievor passed while travelling downhill in pouring rain. He would have been travelling in excess of the speed limit even to approach the other vehicle.

In these circumstances, there was cause for discipline, and the assessment of 10 demerits was not excessive. Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR