

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1134

Heard at Toronto, Friday, November 11, 1983

Concerning

CANADIAN PACIFIC EXPRESS LIMITED (CANADIAN PARCEL DELIVERY)

and

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

EX PARTE

DISPUTE:

Appeal of discipline assessed employee, P. Hesse, Kitchener, Ontario, November 29, 1982.

BROTHERHOOD STATEMENT OF ISSUE:

On March 26, 1982, employee, P. Hesse, is alleged to have delivered a parcel to the wrong address. The parcel was signed for by a consignee. The alleged incident came to the Company's attention in the first part of June 1982, nearly six months prior to the raising of the matter with employee P. Hesse.

As a result of the alleged incident employee, P. Hesse, was assessed fifteen demerit marks for:

"Incorrect delivery of a parcel on March 26, 1982".

As a result employee, P. Hesse, was discharged for accumulation of demerit marks, effective November 2, 1982.

The Union appealed the assessment of fifteen demerit marks on the basis that employee, P. Hesse, was unjustly dealt with inasmuch as (a) there is no proof of commission of the offence on the evidence and (b) the incident is stale and ought not to be relied upon. Additionally, the Company failed to comply with the provisions of article 6 of the collective agreement. In addition, the discipline was excessive.

The Company declined the appeal.

FOR THE BROTHERHOOD:

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

There appeared on behalf of the Company:

D. W. Flicker	– Counsel, CP Ltd., Montreal
D. R. Smith	– Director, Industrial Relations, Personnel and Administration, CP Express, Toronto
B. D. Neill	– Manager, Labour Relations, CP Express, Toronto
A. D. Salis	– Area Manager, Ontario, CP Express, Toronto
J. N. Bennett	– District Manager, Southwestern Ontario, CP Express, London

And on behalf of the Brotherhood:

D. Watson	– Counsel, Toronto
J. J. Boyce	– General Chairman, Toronto
J. Crabb	– General Secretary-Treasurer, Toronto
M. Gauthier	– Vice-General Chairman, Toronto
J. Bechtel	– Local Chairman, Cambridge
P. Hesse	– Grievor

AWARD OF THE ARBITRATOR

There is some evidence, although it is not conclusive, to suggest that the grievor did indeed deliver a parcel to the wrong address in March, 1982. The matter came to the Company's attention in mid-June, when it supplied proof of delivery to the shipper, who had claimed against the Company. The shipper appears to have advised the consignee of this in late August. The consignee contacted the Company in mid-September, saying that the shipment had not been received. The Company carried out certain investigations and in mid-October, not being able to retrieve the goods (and accepting that they had not been properly delivered), paid the claim. The investigation of the grievor was held on November 23, 1982.

In my view the grievor was not given timely notice of the charges against him. These charges, as against the grievor, were only formulated well after the matter had come to the Company's attention, had been investigated, and had been disposed of in a manner prejudicial to the grievor's interest. The matter came to the Company's attention in mid-June. The grievor ought to have been advised that his work was in question at that time (these were not circumstances in which effective investigation would call for the employee's not being notified). When, in November, the Company then sought to discipline the grievor it was, in my view, too late. There was not, I find, just cause for the imposition of discipline in the circumstances.

For the foregoing reasons the grievance is allowed. It is my award that the thirty demerits assessed against the grievor be set aside. Any further relief will depend on the outcome of the grievor's other grievances now before me.

(signed) J. F. W. WEATHERILL
ARBITRATOR