

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1135

Heard at Toronto, Monday, December 12, 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, dated November 29, 1982.

#### **BROTHERHOOD STATEMENT OF ISSUE:**

On September 30, 1982, employee P. Hesse, is alleged to have falsified a delivery record made to Woolco in Cambridge, Ontario. Specifically, it is alleged that employee P. Hesse, delivered the parcel to Woolco and wrote in the signature of an employee of the consignee. Employee P. Hesse denies that he falsified the delivery record. Employee P. Hesse was ordered to attend a question and answer session. At the time of the question and answer session, he had not received notice in writing of the subject matter of the aforementioned question and answer session, nor had he been specifically charged with any offence.

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

"Falsification of delivery records for deliveries made to Woolco in Cambridge".

As a result, employee, P. Hesse, was discharged for accumulation of demerit marks, effective November 29, 1982.

The Union appealed the assessment of demerit marks and the resultant discharge on the grounds that employee P. Hesse was unjustly dealt with inasmuch as (a) no evidence was adduced of falsification of delivery records, and (b) the Company had 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**

Article 6 of the collective agreement deals with investigations and discipline, and requires, among other things, notice of investigation in writing and the opportunity of Union representation. In the instant case the grievor was not given notice of investigation in writing, but was advised orally of the investigation and its subject-matter. At the investigation, the grievor and his representative drew attention to the fact that the notice had not been in writing, but did not object to proceeding, although they were less than cooperative during the course of the investigation. In my view, the requirement of writing is directory only. In the instant case there was actual notice and no request for adjournment. The requirements of article 6 were, I find, substantially complied with.

On the evidence before me in this case I am satisfied, on the balance of probabilities, that the grievor did falsify the Company's delivery records by writing in the names of others as having received parcels for whose delivery he was responsible. This is an offence for which discipline may properly be imposed. The assessment of fifteen demerits for an offence such as this was not excessive, and in my view there was just cause for the penalty imposed in this case.

As a result of the assessment of demerits in this case, the grievor accumulated over sixty demerits – in fact his record stands at seventy demerits as a result of the decision in this case. He would, under the system of discipline in effect, become subject to discipline by reason of having accumulated sixty demerits. While, as has been stated in previous cases in the Canadian Railway Office of Arbitration, the system of discipline is not binding on the Arbitrator (the issue in these cases always being whether or not there is just cause for the action taken by the employer), and while in some cases an assessment of demerit points has been modified in order to avoid the discharge of the employee (it being considered, in effect, that there would not be just cause for that), the instant case, in my view, is not one in which the discharge of the grievor should be set aside. The grievor's discipline record was a bad one, standing at fifty-five demerits, and the offence in the instant case is a serious one. The allegation that the grievor was improperly discriminated against has not been made out. While it is clear that the grievor was not well liked, it is also the case that his behaviour was improper, and his discipline, I find, was on that account.

For the foregoing reasons, the grievance is dismissed.

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