

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1156

Heard at Montreal, Thursday, November 17, 1983

Concerning

CANADIAN PACIFIC EXPRESS & TRANSPORT LTD.

and

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

DISPUTE:

Claim that ten demerits issued Mr. K. Binks account of incident February 24th, 1983 is excessive and should be removed from his file.

JOINT STATEMENT OF ISSUE:

Mr. Binks picked up a skid from Benjamin Moore & Co. which was shrink wrapped.

Mr. Binks picked up a skid from Bee Cee Honey which was tied with a nylon rope.

Mr. Binks had positioned the Benjamin Moore skids against the left wall and against the bulkhead.

The Bee Cee Honey shipment was stowed against the right wall, two and one-half (2.5) feet behind the shipment in front of it.

During the return journey, cartons toppled over, the shipment from Bee Cee Honey slid off.

Mr. Binks was awarded ten demerits.

Union requested demerits be removed.

Company declined the request.

FOR THE BROTHERHOOD:

(SGD.) PAUL ROUILLARD
FOR: 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:

M. Krystofiak – System General Chairman, Calgary

G. A. Gilligan – Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

On February 24, 1983, the grievor, Mr. K. Binks, picked up freight in Vancouver from two of the Company's customers; namely Benjamin Moore and Bee Cee Honey. In the former case he picked up one skid of paint piled seven tiers high and was "shrink wrapped". In the latter case Mr. Binks accepted a skid containing 35 cases piled six tiers high, the top two tiers of which were tied with one piece of nylon rope. The Bee Cee shipment was stowed against the right hand wall of the truck (where it should have been placed "hard up" against the freight in front of it). There existed a 2-1/2 foot space between the Bee Cee shipment and the freight it was placed adjacent to.

On the return trip to the Company's terminal while he was travelling up a hill, the four top layers of the Benjamin Moore shipment broke loose and toppled. As a result considerable damage was caused to the freight on his truck. The Employer has attributed the cause of the damage to the freight to the grievor's alleged negligence. He is specifically charged with having failed to exercise a reasonable and proper standard of care in making certain that the freight that was placed on his vehicle was properly secured. In this regard the Board was referred to the relevant portions of "CP Transport Drivers' Handbook", which read as follows:

Freight must be checked for damage, counted and stowed securely and safely before any movement, to prevent accidents or damage.

2(g) Once the goods are signed for, CP Transport is liable for any damage and/or discrepancy noted at the destination terminal. Therefore, be sure that the merchandise is packed securely to withstand normal handling in transit.

8(a) Refuse unsealed packages tied with rope or string.

The results of the investigation instituted by the Company established that the grievor failed to abide by the "CP Transport Drivers' Handbook" in making certain his freight was properly secured prior to undertaking the trip. In the first instance the evidence demonstrated that he failed to make sure that the top four tiers of the Benjamin Moore shipment was properly and securely packaged. Indeed, in this regard the grievor admitted that he could not say "how secure it was wrapped". Secondly, the evidence showed that the grievor allowed the top two tiers of the Bee Cee Honey shipment to be tied, in direct contravention of the relevant provision of the Handbook, by a piece of rope.

As a result of this alleged negligence the grievor was assessed ten demerit points.

The Trade Union in its brief simply suggested that "Mr. Binks was not negligent in securing the goods on his truck and the discipline of ten demerit marks should be removed from his record". No further explanation was offered as a cause of the damage to the freight.

In the absence of any explanation that would serve to convince me that the cause of the damage to the freight was not attributed, as alleged, by the grievor's breach of the Rules contained in the Drivers' Handbook, I am compelled to uphold the validity of the Employer's charges and thereby sustain the propriety of the penalty of ten demerit points. For that reason the grievance is dismissed.

(signed) DAVID H. KATES
ARBITRATOR