

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1344

Heard at Montreal, Wednesday, March 6, 1985

Concerning

CANADIAN PARCEL DELIVERY (DIVISION OF CANADIAN PACIFIC EXPRESS AND TRANSPORT)

and

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

DISPUTE:

Dismissal of Can Par employee Angelo Marchetta, Montreal, Quebec.

JOINT STATEMENT OF ISSUE:

Employee A. Marchetta was dismissed on March 1, 1984, for falsification of delivery records.

The Brotherhood interceded on behalf of A. Marchetta, stating the discipline was severe and not conducive to past practice of the Company.

The Brotherhood requested employee A. Marchetta be reinstated with full seniority and reimbursed for all monies lost.

The Company denied the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) J. CRABB

FOR: GENERAL CHAIRMAN, SYSTEM BOARD

FOR THE COMPANY:

(SGD.) B. D. NEILL

DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

N. W. Fosbery – Director, Labour Relations, Toronto

And on behalf of the Brotherhood:

J. J. Boyce – General Chairman, System Board of Adjustment No. 517, Toronto

G. Moore – Vice-General Chairman, Moose Jaw

AWARD OF THE ARBITRATOR

The admitted evidence established that over a period of approximately two weeks the grievor deliberately falsified the signatures of consignees with respect to their receipt of freight and failed to make proper delivery of that freight. Of the eleven incidents itemized by the employer in its written brief approximately half the packages involved were not located at the appropriate addresses. Indeed, it is speculative to suggest whether those packages were simply not delivered by the grievor to the customers' address or whether they were dispersed from the delivery point by passers-by once left at the appropriate address. Whatever the situation, it is clear that the grievor was in breach of Rule 10 contained in CanPar's Driver Instruction Manual which reads as follows:

- 10) The following Rules, if violated, could be considered cause for dismissal:
 - E) Deliberate falsification of delivery records, time cards, trip reports, or any other company document.

The trade union basically requests that the grievor be reinstated to the company's employ on whatever terms this Arbitrator deems appropriate.

Unlike **CROA Case No. 1135** where a 15 demerit mark penalty was sustained for the committal of a like incident in an isolated circumstance, the grievor's situation involves a pattern of misconduct with respect to numerous incidents over a protracted period. Moreover, each incident involved the grievor's deliberate, premeditated act of falsification in violation of a known rule of the company. No excuse, save the incredible suggestion that he wished to make his employer look good, was forthcoming that would explain the grievor's unacceptable behaviour. And, because no adequate explanation or extenuating circumstance was forthcoming that would cause me to mitigate the discharge penalty, I have had no reason presented to reinstate the grievor, who is a relatively short term employee, to a position where he will be required to perform the same duties without employer supervision. In other words, the company has established just cause for the action it has taken and therefore it should not be required to assume a continued risk to its business enterprise by retaining an employee whose confidence has been tainted.

For all the foregoing reasons the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR