

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1359

Heard at Montreal Thursday, May 16, 1985

Concerning

CP EXPRESS AND TRANSPORT

and

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

EX PARTE

DISPUTE:

The assessing of fifteen demerits to employee R. Dumont, Ottawa, Ontario, for incident of February 10, 1984.

BROTHERHOOD'S STATEMENT OF ISSUE:

February 10, 1984, employee R. Dumont engaged in a verbal argument with Supervisor Kelly, due to employee R. Dumont having left his work place and objecting to his being sent home due to a junior employee being kept on duty.

The Brotherhood requested the fifteen demerits be expunged from his record, maintaining the assessing of the penalty was not warranted and that it was predicated by the altercation that took place at the time of the incident.

The company refused the union's request.

FOR THE BROTHERHOOD:

(SGD.) J. CRABB

FOR: GENERAL CHAIRMAN, SYSTEM BOARD OF ADJUSTMENT NO. 517.

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, Don Mills

G. Moore – Vice-General Chairman, Moose Jaw

AWARD OF THE ARBITRATOR

The grievor was assessed 15 demerit marks for his insubordinate action in failing to follow the order of his Supervisor, In this regard the grievor allegedly violated Company Rule 11 (d) and 11 (e) which read as follows:

11. The following Rules, if violated, will be sufficient cause for dismissal:

...

- d)** Failure to obey instructions of authorized personnel.
- e)** Deliberate disobedience or orders of authorized personnel.

There is no dispute that what precipitated the grievance was the grievor's unauthorized absence from the work place. When the grievor's Supervisor, Mr. Kelly, was informed of the grievor's misconduct he advised him that he was finished for the day " and instructed him to punch out". When the grievor did not proceed to punch out with the required dispatch, Mr. Kelly took the grievor's time card to punch out on his behalf. Mr. Dumont then insisted he could punch out his own time card and seized the card from Kelly's possession. In so doing he struck Mr. Kelly accidentally. An altercation then ensued which the employer advises played no part in the company's decision to discipline.

The company argued that the grievor's refusal to punch out as directed by Mr. Kelly was an insubordinate act committed in violation of the company's rules as set out in this decision . The company suggests, in the absence of any exceptional circumstance, " the obey now, grieve later rule" ought to have applied. In other words, if the grievor held a legitimate objection to his being suspended for the balance of his shift the grievance procedure was available to him to advance that objection.

On the principal issue as to whether the grievor disobeyed Mr. Kelly's order to punch out it may serve a useful purpose to refer directly to transcript of the grievor's investigation:

- Q.** Did Supervisor Kelly then instruct you to punch out and that you were finished for the day?
- A.** Yes.
- Q.** At this time did you follow his instructions?
- A.** No, because there were people with less seniority working there and felt it wasn't fair.

On the face of the record there is a clear admission of employee insubordination to the clear instruction of his Supervisor. And, it is my opinion that the grievor's reluctance to follow Mr. Kelly's instruction with the anticipated dispatch resulted in the unfortunate altercation that ensued. Or, from a different perspective, the grievor was clearly the author of his own misfortune.

Because it is my conclusion that the grievor committed an insubordinate act in failing to follow the clear instruction of his Supervisor and in circumstances that permitted no exception to the " obey now, grieve later" rule, I do not hold I am warranted in intruding upon the 15 demerit mark penalty that was assessed. Accordingly the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR