

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1455

Heard at Montreal, Wednesday, January 15, 1986

Concerning

CP EXPRESS AND TRANSPORT LIMITED

and

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

EX PARTE

DISPUTE:

Concerns the issuing of fifteen demerit marks to Mr. G. Whiteside, Edmonton, Alberta, for alleged "Failure to appear for a question and answer statement June 5, 1985 and June 20, 1985".

BROTHERHOOD'S STATEMENT OF ISSUE:

June 3, 12, 18 and 21, 1985, Mr. G. Whiteside was directed instructed to attend a Company sponsored and controlled investigations, he attended these investigations June 21 and June 26, as instructed.

The Company's position is that Mr. G. Whiteside failed to appear for a questions and answers June 5 and 20, 1985, and that the grievance was declined.

The Union's position is that this employee asked for postponements as his wife was close to giving birth and that he was needed at home for personal family reasons every minute he was not working, that he was directed – instructed by a Company Officer to attend investigations outside of and beyond the hours of his regular assignment, simply because he had walked onto Company property with a baseball bat.

The relief requested is for removal of the fifteen demerit marks and that all notice concerning these demerits be expunged from his work record.

FOR THE BROTHERHOOD:

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

There appeared on behalf of the Company:

N. W. Fosbery	– Director Labour Relations, Toronto
B. D. Neill	– Director Human Resources, Toronto
B. Bennett	– Human Resources Officer, CanPar, Toronto

And on behalf of the Brotherhood:

J. J. Boyce	– General Chairman, Toronto
J. Crabb	– Vice-General Chairman, Toronto
G. Moore	– Vice-General Chairman, Moose Jaw
M. Gauthier	– Vice-General Chairman, Montreal
J. Bechtel	– Vice-General Chairman, Cambridge

AWARD OF THE ARBITRATOR

The grievor was assessed 15 demerit marks for his failure to attend scheduled disciplinary interviews for June 5 and June 20, 1985 with respect to an incident that occurred on June 3, 1985.

The grievor on short notice prior to the scheduled interviews sought postponements because of either alleged personal reasons or an alleged prior commitment. In its brief the Trade Union indicated that the reason for the requested postponement related to the imminent birth of the grievor's first child. The Company agreed that if that was the excuse then had it been notified of the particulars it would have likely agreed to a postponement.

The evidence indicated that the grievor's wife gave birth on June 12, 1985.

I have not been satisfied that the grievor at any material time clearly communicated to the Employer his alleged reason for his inability to attend the scheduled interviews. Had that been the case I am satisfied that he could have achieved a postponement until his wife gave birth.

In any event, his wife's predicament could hardly have been a cause for concern with respect to the June 20th interview.

I have concluded that the grievor's alleged excuse for all postponements was simply a means of purposely delaying the holding of the interview. It is clear that immediately after the grievor was taken out of service for his failure to appear at the June 20th interview, he attended without difficulty the interview scheduled for June 21, 1985. In other words, I have been satisfied of "cause" for misconduct that warranted a disciplinary response by the Employer.

As a result the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR