

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1459

Heard at Montreal, Wednesday, January 15, 1986

Concerning

### EXPRESS AIRBORNE

and

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

#### DISPUTE:

The assessing of fifteen demerits to Express Airborne employee M. Franzini, Toronto, Ontario.

#### JOINT STATEMENT OF ISSUE:

May 31, 1985, employee M. Franzini was assessed fifteen demerits for allegedly leaving freight behind in the warehouse May 16, 1985.

The Brotherhood grieved the demerits stating employee Franzini was not aware of any more freight to be loaded in his truck, thus the demerits should be removed from his record.

The Company declined the Brotherhood's request.

#### **FOR THE BROTHERHOOD:**

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

#### **FOR THE COMPANY:**

**(SGD.) B. D. NEILL**  
DIRECTOR, HUMAN RESOURCES, CP TRUCKS

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
M. Flynn	– Vice-General Chairman, Vancouver
G.C. Moore	– Grievor

## **AWARD OF THE ARBITRATOR**

It should be noted for the record that at the time the incident recited herein occurred the grievor had accumulated 25 demerit marks and not 40 demerit marks as alleged by the Trade Union.

The uncontradicted evidence has convinced me that when the grievor was required on May 16, 1985, to sort mail at the Company's warehouse at the Toronto International Airport, he held the corollary duty and responsibility of conveying the sorted mail to the "walker" located in downtown Toronto in order to effect delivery to the customer.

Should he have left the sorted mail behind at the warehouse without effecting delivery as alleged by the Employer, then this would constitute an infraction that warranted the issuance of a disciplinary penalty.

And, indeed, the transcript from the grievor's Q. and A. indicates the following:

- 6) Q. Are you aware that you left freight behind?  
A. Yes.
  
- 8) Q. Did you check you freight against your bills?  
A. Yes.

The significance of the procedure for checking freight against the bills is that it provides a means of verifying the grievor's work load for the day in question. Moreover, it gives substance to the previous admission that he was aware he had left freight behind. Accordingly the Trade Union's defence that the delivery duties in question were the "walker's" responsibility, or alternatively that the grievor did not know they were his responsibility is totally without merit.

Because I have been satisfied of misconduct I have not had presented any reason to conclude that the 15 demerit marks assessed against the grievor was unjust.

The grievance is denied.

**(signed) DAVID H. KATES**  
**ARBITRATOR**