

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1462

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 discipline assessed and dismissal of Express Airborne Employee G. Bardakjian, Toronto, Ontario.

JOINT STATEMENT OF ISSUE:

Employee G. Bardakjian was assessed on May 29, 1985, discipline for two incidents of alleged customer abuse and dismissed.

This employee was assessed fifteen demerits for the incident of April 15, 1985, and assessed thirty demerits for another incident which occurred sometime prior to April 24, 1985. This thirty demerits were reduced to fifteen at Step three of grievance procedure.

The Brotherhood contends there was an unnecessary delay in holding the investigation for the incident of April 15, 1985. There is no evidence as to the date the alleged second infraction occurred, and contend that as Company did delay in holding the first investigation, there should have only been one investigation under the subject matter of "Abuse to Customers". The Brotherhood requested all demerits be removed and the employee be reinstated with full seniority and reimbursed all monies lost.

The Company contends that as the incidents were entirely separate the discipline was assessed in a proper manner and declined the Union'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:

B. D. Neill	– Director Human Resources, CPET, Toronto
N. W. Fosbery	– Director Labour Relations, CPET, 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

AWARD OF THE ARBITRATOR

The grievor was assessed 15 demerit marks for incidents involving alleged customer abuse that occurred on April 15, 1985, and April 24, 1985. As a result of the Company's imposition of thirty demerit marks for the two incidents the grievor was discharged on May 29, 1985.

There is no dispute that the incident of customer abuse that occurred on April 15, 1985 was admitted by the grievor at his Q. & A. and thereby justified the Employer's disciplinary response of imposing 15 demerit marks.

The Employer's evidence with respect to the incident of April 24, 1985 was restricted to a letter of complaint of that date from a customer indicating difficulties with the grievor relating "to his bad attitude problem" and his "always seems to be looking for an argument with me when he comes in".

This letter constituted the basis for the culminating incident of customer abuse that precipitated the grievor's discharge.

The Company could rely on no incident that might have warranted the conclusion that the customer in question was actually subjected to abuse. And, indeed, this Arbitrator has not had any particulars with respect to the time, place, and circumstance where an infraction might have occurred. It is trite law that in order for an Employer to establish cause for discipline it has the onus of proving that an incident relating to employee misconduct occurred. Needless to say the Company cannot rely on allegations of wrongdoing without substantiating those allegations at arbitration if it seeks to sustain a discharge penalty.

When the Company representative was asked at the hearing whether he would have fired an employee if the customer's letter of complaint related to a charge of employee theft, Mr. B.D. Neill conceded that the Company would have to adduce particulars of an alleged theft and establish the same in evidence at the arbitration hearing to support any disciplinary response it may have imposed.

In my view, this is the very obligation that is imposed on the Employer where it argues that the discharge penalty is warranted with respect to an incident of alleged customer abuse.

As a result, since I have not been satisfied of just cause for the imposition of 15 demerit marks for the culminating incident of April 24, 1985, that aspect of the grievor's grievance succeeds.

The Company is directed to reinstate the grievor forthwith with compensation and all other related benefits.

I shall remain seized for purposes of the implementation of this award.

(signed) DAVID H. KATES
ARBITRATOR