CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1465

Heard at Montreal, Tuesday, February 11, 1986

Concerning

CP EXPRESS AND TRANSPORT LIMITED

and

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

EX PARTE

DISPUTE:

The extent of discipline issued to Linehaul driver, Mr. England of Vancouver (Port Coquitlam terminal) by the Accident Review Committee, and concurred with by the Company, for a vehicle accident that occurred on or about November 19, 1984.

BROTHERHOOD'S STATEMENT OF ISSUE:

Linehaul driver, Mr. P. England was suspended from his driving position which he held in the Port Coquitlam terminal. The Accident Review Committee imposed, again with the Company's concurrence, a two and one-half year penalty; comprising of one year in the Warehouse department – November, 1984, through to November, 1985; at this time, and only if qualified, could this employee hostle trailers on the Company property only, November 1985 through till March, 1986. Then if qualified could drive City Tractor-Trailer from March, 1986, through till March, 1987 after which time he then could re-apply to the Linehaul department.

Further the Company compromised this employee's seniority by not allowing this employee to fully exercise onto a Warehouse position when placed into this department, and also, did not give this employee his full rate of pay (maintenance of basic rate) while he was removed from his driving position.

The Union contends that neither the employee's past record nor the circumstances of the accident warranted such severe and extreme discipline. The Union is seeking relief in the form of a reduction in discipline, and that this employee be placed back onto his former driving position; and also, that he be reimbursed for all monies lost since his removal from his former position as a Linehaul driver.

The Company has to date declined the Union's requests.

FOR THE BROTHERHOOD:

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

There appeared on behalf of the Company:

N. W. Fosbery	– Director Labour Relations, CPET, Toronto
B. D. Neill	– Director Human Resources, 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, Mr. P. England, was employed at the Company's Vancouver Terminal in the capacity of a Linehaul Driver. On November 19, 1984, the grievor lost control of his tractor and trailer and hit a bridge thereby ending up on its side in a ditch. Damage to equipment, contents and public property amounted to $55,000.

The grievor's disciplinary record showed that on April 17, 1984 the grievor ran through a red light and in so doing struck another vehicle which claimed the life of a 36 year old woman. In that case the grievor, on recommendation of the Accident Committee, was grounded for a 6 month period and performed the work of a Warehouseman. That discipline was not grieved.

The incident of November 19, 1984 was referred to the Accident Committee which reached the unanimous decision that the grievor's accident was preventable. It recommended the grievor's reversion to position as a warehouseman, a yard service employee and a city driver for prescribed periods at the end of which he would resume his regular linehaul duties as of March 19, 1987. The Company varied the Accident Committee's recommendation by demoting the grievor for an eleven month period to warehouseman and for a seven month period to yard driving service. It is anticipated that the grievor will apply for his regular position as linehaul driver on May 24, 1986.

It is not disputed that the grievor's responsibility for the accident represented a serious lapse that warranted an appropriate response. Indeed, the Trade Union acknowledged that a reversion to a position where vehicular driving is restricted is often an appropriate disciplinary measure where the operator's driving qualifications and the public safety are in issue. Accordingly, the argument that was originally made in the Trade Union's written brief that the Employer's departure from the accepted mode of discipline under "The Brown System" was improper was abandoned during the course of the proceedings.

The Trade Union's complaint rested solely on the notion that the grievor's demotion to the restricted driving positions of firstly warehouseman and then yard driver was simply too long. Moreover, owing to his severe loss of income the Trade Union also argued that the grievor should not have been demoted to warehouseman at all. In other words, the argument was made that the discipline exacted was simply too harsh.

Based on the grievor's record of a previous incident where he was held responsible for an accident causing a loss of life and owing to his most recent incident involving his loss of control of a vehicle causing substantial property damage I have no reason to question the Company conclusion that the grievor's driving skills had become "suspect". In my view that concern as expressed by the Company was clearly an understatement.

But notwithstanding the seriousness of the grievor's offence and the severity of the disciplinary penalty that was recommended by the Accident Committee the Company implemented a substantially more moderate penalty. It reduced the period the grievor might remain "suspended" from his regular position by approximately one year.

In the absence of an explanation that might provide a rationale for my exhibiting greater tolerance of the grievor's admitted fault for the accident I cannot justify disturbing the Employer's decision for imposing the penalty that was assessed.

The grievance is accordingly denied.

(signed) DAVID H. KATES
ARBITRATOR