

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1495

Heard at Montreal, Thursday, March 13, 1986

Concerning

### CP EXPRESS AND TRANSPORT LIMITED

and

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

#### DISPUTE:

Concerns the Union's request for the removal of fifteen (15) demerit marks issued to B. O'Hara, Edmonton, Alberta, July 4, 1985, for signing for two shipments at Gough Electric, bringing in the waybills but not the goods.

#### JOINT STATEMENT OF ISSUE:

June 19, 1985, Mr. B. O'Hara was sent to Gough Electric to pick up two shipments, he signed for the shipments but due to mechanical problems he was unable to bring in the shipments.

The Company's position is that B. O'Hara was aware of ensuring that traffic signed for is picked up and the request for the removal of the fifteen (15) demerit marks was declined.

The Union's position is that B. O'Hara encountered mechanical problems with his vehicle after he had signed for the shipments. In order to save time he phoned the dispatcher for assistance and was advised that the shipments would be picked up by another driver and he was advised to take his vehicle for mechanical repairs to a garage.

The relief requested is for the removal of the fifteen (15) demerit marks.

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

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

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

**(SGD.) N. W. FOSBERY**  
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

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

And on behalf of the Brotherhood:

G. Moore – Vice-General Chairman, Moose Jaw  
J. Crabb – General Secretary-Treasurer, Toronto

## **AWARD OF THE ARBITRATOR**

Cases 1493, 1494 and 1495 will be consolidated and heard together.

It is common ground that the grievor, Mr. O'Hara has been employed as warehouseman/driver since June 10, 1983. His cumulative disciplinary record since his date of hire, as the Company's evidence disclosed, has been truly abysmal.

In the first incident the grievor was disciplined for his alleged violation of the Vehicleman's Instruction Manual for his failure to make sure a label indicating the addressee of the goods was secured on the shipment. The grievor's explanation was that the label must have fallen off the shipment. In this regard the shipment was "shrink wrapped" and therefore would not likely have fallen off.

The grievor was assessed ten demerit marks for this incident.

In the second incident the grievor left work 1-1/2 hours before his quitting time. He complained of feeling ill and "told" the dispatcher he was going home. Of course, the proper procedure for the grievor to have followed would have required him to secure "permission" of his immediate supervisor.

For this infraction he was assessed 20 demerit marks.

In the third incident the grievor secured from the customer the necessary waybills and other documentation with respect to shipments but neglected to pick up the shipment itself. The grievor's excuse was that there was a mechanical defect to his truck that prevented him from backing up to the customer's dock in order to secure the shipment.

For this alleged neglect of duty the grievor was assessed 15 demerit marks which resulted in his discharge.

Based on the rather flimsy and transparent explanations extended the grievor for his wrongdoings I have no intention of interfering with the penalties that were assessed. The grievor appeared incapable of performing the fundamental functions of his position.

The Company, based on the grievor's abysmal record, has attempted to adhere to the principle of progressive discipline. In the face of that record, it should not have to tolerate the grievor's presence as an employee any longer.

As a result the grievances are denied.

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