

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1496

Heard at Montreal, Thursday, March 13, 1986

Concerning

CANPAR

and

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

DISPUTE:

The dismissal of employee Peter Falke, CanPar, Toronto, Ontario.

JOINT STATEMENT OF ISSUE:

September 30, 1985, employee Peter Falke, was dismissed from service for an incident that occurred September 11, 1985.

The Brotherhood grieved stating the dismissal was not warranted or justified and requested he be reinstated with full seniority and benefits and reimbursed for all monies lost while held out of service.

The Company rejected 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:

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

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

The facts precipitating the grievor's discharge are relatively straight forward.

After the grievor completed a delivery on September 11, 1985, he was in a hurry to make his next stop. He took a shortcut in order to avoid some speed bumps by driving his truck the wrong way on a one-way narrow lane. He then was met by a vehicle driven by Mrs. S. Jones, who was travelling properly on the same one-way street.

Mrs. Jones, as was her right, refused to defer to the grievor's vehicle that was travelling in the wrong direction. She stopped her vehicle thereby making it difficult for the grievor to pass. By the same token Mrs. Jones was prevented from proceeding.

The evidence indicated that Mrs. Jones got out of her vehicle where both she and the grievor exchanged obscenities. It was clear as a result of that exchange that Mrs. Jones was not about to give way to Mr. Falke's vehicle.

As I understood the evidence the conversation between Mrs. Jones and Mr. Falke took place while Mrs. Jones was standing at the driver's side of the CanPar truck. After their heated discussion Mrs. Jones went around the front of the CanPar vehicle to return to her own vehicle. As she did so the grievor allegedly placed his vehicle in gear and lurched forward. Mrs. Jones claimed that had she not stepped back she might have been hit.

The grievor's recitation of the incident was corroborated by a witness, Ms. P. Collette. She indicated that Mr. Falke placed his vehicle in the drive position and the truck then lunged forward. Had Mrs. Jones not moved in time Ms. Collette stated Mrs. Jones would have been hit.

Mr. Falke denied he placed his vehicle in a drive position with a view to hitting Mrs. Jones. He simply suggested that after his conversation with Mrs. Jones was over he proceeded to turn his truck around in order to proceed down the street in the proper direction over the speed bumps he initially had sought to avoid. There was never any intention on his part to hit Mrs. Jones.

The Trade Union has conceded that the grievor's conduct warranted a severe disciplinary response by the Company. Nonetheless, based on the commendations the grievor has received as a good driver, it was argued that the grievor should not have been discharged. But, of more significance, the grievor's driving record during the 5 year period of his employment simply does not represent an individual who would deliberately attempt to run another individual over.

In resolving this dispute I do not hold that the evidence before me substantiates the charge that the grievor deliberately attempted to hit Mrs. Jones with his CanPar vehicle. I am satisfied however that after his heated exchange with Mrs. Jones the grievor, because of his exasperation, did move his car for the express purpose of turning it around to leave the street in the proper direction. He may even have moved the vehicle in a forward direction to achieve that purpose. If Mrs. Jones was intimidated by the grievor's subsequent actions it may not necessarily have been because of a deliberate act on his part. But, nonetheless, the grievor's omission to handle his vehicle with appropriate caution may have been responsible for leaving the impression that he intended to run her over.

Nonetheless, even if Mrs. Jones was really of the opinion that Mr. Falke intended to run her over I cannot appreciate why she would not have contacted the police for the purpose of making an appropriate charge.

In the last analysis the grievor's breach of the minimal standard of care that is to be expected of a professional truck driver did warrant a severe disciplinary penalty. But since I have not been satisfied that his actions, as alleged, were with the intention of deliberately hitting Mrs. Jones, I have resolved against sustaining the discharge. Instead, I am satisfied that the grievor should have received a one year's suspension without pay.

For all the foregoing reasons the Company is directed to remove the discharge from the grievor's record and in lieu thereof to impose a one year's suspension.

I shall remain seized.

(signed) DAVID H. KATES
ARBITRATOR