

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1509

Heard at Montreal, Thursday, April 10, 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 M. Franzini, Toronto, Ontario.

#### JOINT STATEMENT OF ISSUE:

Employee M. Franzini was assessed twenty demerits and dismissed on October 25, 1985 for alleged unsecured vehicle.

The Brotherhood contends the vehicle was secured, and requested the twenty demerits be removed and he be reinstated with full seniority and reimbursed all monies lost.

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, LABOUR RELATIONS

There appeared on behalf of the Company:

B. D. Neill	– Director Labour Relations, CP Trucks, Toronto
N. W. Fosbery	– Director Labour Relations, CPE&T, Toronto
D. Bennett	– Human Resources Officer, CanPar, Toronto
R. Haggarty	– Witness

And on behalf of the Brotherhood:

J. Crabb	– Vice-General Chairman, Toronto
J. Bechtel	– Vice-General Chairman, Cambridge
M. Franzini	– Grievor

## AWARD OF THE ARBITRATOR

The plain and simple issue in this case is whether the grievor on October 17, 1985 left his vehicle unsecured while in the process of making a delivery to a customer. It is common ground that, for security reasons, an employee's failure to lock both the doors and windows to his vehicle is a serious infraction deserving of an appropriate disciplinary response.

At the time of the incident the grievor had accumulated 45 demerit marks and the imposition of 20 demerit marks for the culminating incident resulted in his discharge.

The evidence indicated that Mr. R. Haggarty, Operations Manager, observed on October 17, 1985, the grievor's vehicle with the two front doors unlocked and the window on the driver's side open. He indicated that when he confronted the grievor with his observations the grievor indicated that he normally locked the doors and closed the windows of his vehicle while making a delivery.

Mr. Haggarty insisted that it was only during the Q&A that Mr. Franzini indicated that he had properly secured his vehicle.

During Mr. Franzini's testimony he described the caution he exhibited in making certain that his vehicle was properly secured. At the time he was confronted by Mr. Haggarty he alleges that he advised that both he and his walker, Mr. J. Bordakjian made certain that the vehicle doors were locked and windows were closed.

Mr. Franzini suggested that Mr. Haggarty had set him up for dismissal. Firstly, it was charged that Mr. Haggarty had access to the keys of the grievor's vehicle and likely unlocked the doors and opened the window while he was making his delivery. And, the alleged motive for Mr. Haggarty's actions was because of his alleged "hatred" for the grievor's brothers. Moreover, he had given the grievor a dirty look after he had presented Mr. Haggarty with a grievance earlier that morning. In other words, it was alleged that Mr. Haggarty bore some sort of grudge against the grievor or his family that would result in his taking these alleged sinister steps to secure his discharge.

Mr. Haggarty indicated he had a working relationship with the grievor's brothers (who apparently hold union office) and denied that any grievance was presented to him that day which would warrant his giving the grievor a dirty look. Incidentally, no grievance was adduced in evidence that would confirm or substantiate Mr. Franzini's theory.

In the last analysis I am satisfied that on the balance of probabilities Mr. Haggarty's recitation of the events makes more logical sense than the grievor's hypothesis. Quite clearly, the grievor had every motive for fabricating a contrived, detailed description of the cautious approach he presumably took to ensure his vehicle was secure. However, Mr. Haggarty's recitation of his spontaneous statement upon being confronted with the allegation is more credible than the grievor's alleged denial. In other words, he admitted his infraction when he stated "he normally locks the doors and closes the windows". Finally, I cannot appreciate why Mr. Haggarty would risk his credibility as an Operations Manager who is required to deal with employees on a day-to-day basis by taking the type of vindictive action that was described by the grievor. Indeed, the grievor made no effort to provide me with the confirmatory evidence of the grievance that allegedly gave rise to Mr. Haggarty's set up.

For all foregoing reasons, I am satisfied that in having regard to the grievor's record, his discharge was warranted. The grievance is denied.

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