

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1533

Heard at Montreal, Thursday, June 12, 1986

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Withdrawal of 10 demerit marks assessed to R. Dubé's disciplinary record.

JOINT STATEMENT OF ISSUE:

On May 1st, 1985, employee R. Dubé was summoned to a disciplinary investigation to clarify the facts about his allegedly dangerous driving and excessive speed on April 3rd, 1985. Following the investigation, 10 demerit marks were assessed against the employee's record.

The evidence adduced from the investigation was based on a report made by a security guard and the Brotherhood contends that the report was arbitrary and not based on any objective evidence. Therefore, the Brotherhood is requesting the withdrawal of the 10 demerit marks.

The Company denied the claim.

FOR THE BROTHERHOOD:

(SGD.) J. MANCHIP
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. L. BENNER
DIRECTOR OF MATERIALS

There appeared on behalf of the Company:

P. P. Macarone	– Supervisor of Training and Accident Prevention, Montreal
J. P. Deighan	– Assistant Director of Materials, Montreal
A. Bourassa	– General Stores Supervisor, Montreal
C. Denis	– Supervisor Materials, Montreal
P. E. Timpson	– Labour Relations Officer, Montreal
D. J. David	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

D. J. Bujold	– General Chairman, Montreal
J. Manchip	– General Secretary & Treasurer, Montreal
J. Germain	– Vice-General Chairman, Montreal
C. Pinard	– Local Chairman
R. Locas	– Observer
R. Dubé	– Grievor

AWARD OF THE ARBITRATOR

Store Rule 13 reads in part:

Parking lots - driving faster than 10 mph (15 km/h) or other unsafe driving on Company property..

The grievor was assessed 10 demerit marks for his driving his Suzuki vehicle in the Company's parking lot at a speed of approximately 30 to 35 mph. As a result he caused a safety hazard with respect to the many employees who were located in the parking lot and were about to enter the Company's premises at the start of their afternoon shift.

When confronted by Mr. H. Morissette, the Security Guard who had observed the grievor's alleged speeding infraction, he advised the grievor that he may have to make a report. The grievor responded by saying "Make your report. It won't keep me awake at nights".

It is to be observed that the grievor did not deny that he was speeding. Or, if he was speeding, he did not apologize or show the least bit of remorse for the incident.

The Trade Union alleges that the grievor, in the environs of the Company's parking lot, would not have possibly been travelling 30 to 35 mph. This was particularly the case in that he had to stop his vehicle at the entrance to the parking lot.

It is immaterial to establishing a violation of the rule with respect to excess speeding should the Company fail to pinpoint the grievor's exact speed. It is not necessary for the Company to secure sophisticated Radar equipment to establish a precise case of a breach. Mr. Morissette's calculation was intended to be approximate and was thereby impressionistic.

The significant point is that upon being confronted with the charge of breaking the speed limit the grievor did not deny Mr. Morissette's allegation.

On the balance of probabilities, I am satisfied that the charge, as alleged, was established. Because of the grievor's past disciplinary record I also hold the 10 demerit mark penalty was justified.

The grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR