

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1554

Heard at Montreal, Tuesday, September 9, 1986

Concerning

CANADIAN PARCEL DELIVERY

and

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

DISPUTE:

The assessing of twenty demerits to and the resulting dismissal of employee S. Seguin, CanPar, Orillia, Ontario.

JOINT STATEMENT OF ISSUE:

Employee S. Seguin was assessed twenty demerits for failure to attempt to deliver freight on January 14, 1986. As the result of the accumulation of demerits the employee was dismissed on February 11, 1986.

The Brotherhood grieved the discipline maintaining the employee had not failed to attempt to deliver freight on January 14, 1986

The Brotherhood requested the removal of the demerits from the employee's record and the employee be reinstated with full seniority and reimbursed all monies lost.

The Company declined the Brotherhood's request.

The relief requested is the complete removal of the twenty demerits and the employee, S. Seguin, be reinstated with full seniority and benefits and paid for all time lost while held out of service.

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

(SGD.) N. FOSBERY
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Bennett – Human Resources Officer, Toronto

And on behalf of the Brotherhood:

G. Moore – Vice-General Chairman, Moose Jaw

J. Crabb – Vice-General Chairman, Toronto

S. Seguin – Grievor

AWARD OF THE ARBITRATOR

The material establishes that Supervisor R. Burroughs performed a random spot check on the grievor's truck on January 15, 1986. He discovered three pieces of freight which, according to their colour codes, appeared overdue for delivery by two, three and four working days respectively. On that basis the grievor was assessed 20 demerit marks, which at that time brought his accumulation of demerit marks to 70. As 60 demerit marks are cause for dismissal, the grievor was terminated effective February 11, 1986 following an investigation on January 30, 1986.

The grievor's evidence suggests the possibility that the parcels in question might have fallen under the conveyor belt upon arrival at the Orillia terminal, as a result of which they would have been put on his truck at a later date than the colour code would indicate. No direct evidence was adduced, however, to establish that that was the case. The Company does not dispute that this does happen on occasion. The Union therefore submits that the Company has failed to discharge the burden of proof to show, on the balance of probabilities, that the grievor was at fault.

In the Arbitrator's view, however, the evidence would support the more probable inference that the colour coding system worked as it normally does, and an exceptional circumstance is not made out on the evidence. However, in light of the importance of the colour coding system to the administration of discipline against drivers, in the interest of fairness, the Arbitrator recommends that the parties consider the value of specially tagging pieces of freight which are loaded onto a driver's truck on any day later than the day indicated on the colour code. If that were done, any parcel which had been held up by falling off the conveyor, or was otherwise misplaced, would clearly show the date it was loaded onto a driver's truck, thereby eliminating any uncertainty.

As noted, on the evidence in the instant case, the Arbitrator is satisfied, on the balance of probabilities, that the freight in question was loaded onto the grievor's truck on the dates indicated by the colour code. There are, however, mitigating circumstances which must also be taken into consideration. The evidence establishes that at the time in question the grievor was delivering on two separate routes on alternating days, and performing pick-ups on both routes every day, over a relatively extended delivery route covering the southern portion of Simcoe County. The unchallenged evidence of the grievor is that since his termination the routes which he was covering alone have been redistributed to be handled by two drivers. In light of that evidence, and of further material substantiating the Union's position with respect to the workload in question, I am satisfied that, while the grievor was not entirely without fault in failing to direct his attention to the overdue freight, the demands of the two routes he was covering were a contributing factor. In the circumstances, the Arbitrator orders that ten demerits be substituted for the 20 demerits assessed against the grievor. In light of the earlier decision respecting the same employee in **CROA 1553**, the accumulated demerit marks registered against the grievor now total 55. In the Arbitrator's view it is appropriate that the grievor be reinstated, without compensation and without loss of seniority. I retain jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award.

(signed) MICHEL G. PICHER
ARBITRATOR