

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1577

Heard at Montreal, Tuesday, November 11, 1986

Concerning

### CP EXPRESS AND TRANSPORT LIMITED (EXPRESS AIRBORNE)

and

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

#### EX PARTE

#### **DISPUTE:**

The Company violating article 6 of the collective agreement involving Vancouver employee, S. Judge; and whether or not this above mentioned employee's resignation was freely formed in intent.

#### **BROTHERHOOD'S STATEMENT OF ISSUE:**

On or about September 19th, 1985 this employee without authorization did use a Company vehicle for personal use. The Company officer in charge held a meeting in this office privately with this employee on October 15th, 1985 and rather than notifying this employee that the Company was going to hold an investigation in line with collective agreement; notified the employee that unless he tendered his own resignation he would be terminated by the Company.

The Brotherhood's position is that the Company abrogated the employee's rights under article 6 of the collective agreement; and further has not met the requirements, that of this employee resigning voluntarily. Also, proofing the objective and subjective requirements of resignation involving this employee.

The Company to date has maintained that the subjective and objective requirements of employee resignation were met; and further, that there were no improprieties involving the Company officer meeting privately with this employee. To date the Company has declined the Brotherhood's request to have this employee reinstated and to be paid for all wages lost during this period and that upon the settlement of the former that an investigation then be held in accordance with the collective agreement.

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

**(SGD.) MICHEAL W. FLYNN**

**FOR: SYSTEM GENERAL CHAIRMAN**

There appeared on behalf of the Company:

D. Bennett – Manager Human Resources, CanPar, Toronto  
B. D. Neill – Director Labour Relations, Toronto  
B. Weinert – Manager Labour Relations, CPE&T, Toronto

And on behalf of the Brotherhood:

J. J. Boyce – General Chairman, Toronto

G. Moore – Vice-General Chairman, Moose Jaw  
M. Flynn – Vice-General Chairman, Vancouver

### **AWARD OF THE ARBITRATOR**

The material establishes that on October 15, 1985, Branch Manager Sutherland met privately with the grievor in his office. While the meeting was intended to be in the nature of a preliminary investigation into the alleged unauthorized use of a Company vehicle by the grievor on the previous week-end, it appears that it developed into something more. The grievor, who was not accompanied by a Union Representative apparently admitted the facts to his Manager. Mr. Sutherland then told the grievor that he would be better advised to resign rather than face discharge and the consequent blemish on his record for future employment. While it appears that Mr. Sutherland suggested to the grievor that he think about it for a while, Mr. Judge returned to the Manager's office within fifteen minutes, stating that he wished to resign. He then signed a resignation statement drafted by Mr. Sutherland.

While there is some dispute about whether Mr. Judge attempted to contact his Manager the next day, it is not disputed that he did contact his Shop Steward, in what can only be interpreted as an effort to undo what had been done. When it was clear that the Company took the position that the matter was closed on the ground that Mr. Judge had resigned his employment, on October 19th Mr. Judge instructed the Union to file a grievance on his behalf. Following further investigation by the Union a formal grievance was filed on October 29th, 1985.

It is well established that to be effective, an employee's resignation must be a voluntary act. A statement made in the heat of the moment, or under duress, may not reflect an employee's true intention or free will. (*See, generally, Anchor Cap Enclosure Corporation of Canada Ltd. (1949), 1 LAC 222 (Finkleman); Metropolitan Toronto Board Of Commissioners of Police (1978), 18 LAC (2d) 7 (Adams)*).

In the instant case resignation was plainly not the grievor's idea to begin with. It was initiated by Mr. Sutherland, in a context that characterized resignation as the only alternative to disciplinary discharge. The suggestion was put to the grievor without the benefit of Union representation to which he would normally be entitled during the more formal investigation which is required by the collective agreement prior to the imposition of discipline. It is true that in many instances resignation may be a preferable alternative to a disciplinary discharge. However, that choice may frequently involve the weighing of complex factors better evaluated with the assistance of a bargaining agent. Resignation, involving as it does the forfeiture of seniority, of the right to grieve, and of all other rights of an employee under a collective agreement is a decision which should be neither made lightly by the employee nor accepted by an employer without the assurance that it is a voluntary and considered decision.

In the instant case, without suggesting any bad faith on the part of Mr. Sutherland, the Arbitrator must conclude that Mr. Judge's expression of his wish to resign was made hastily, under duress and did not reflect his true intention. This is confirmed by his immediate efforts of the next day, through contact with his Union, to reverse what happened in the two private meetings with his Branch Manager. I am satisfied, on the balance of probabilities, that absent the threat of disciplinary discharge, a threat made without the benefit of a full disciplinary investigation, which would involve the weighing of any mitigating factors, the grievor would not have agreed to sign the letter of resignation drafted for him by his Supervisor. By the standards established in arbitral jurisprudence, I am satisfied that the grievor did not in fact resign. In the circumstances, he was constructively discharged.

The Union does not dispute that the grievor was guilty of some wrong-doing, and specifically that he did make unauthorized use of a Company vehicle while off duty. In the circumstances, the Arbitrator deems it appropriate that the grievor be reinstated in his employment, without compensation and without loss of seniority. It is so ordered, and I remain seized in this matter in the event of any disagreement respecting the interpretation or implementation of this award.

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**