

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1713

Heard at Montreal, Tuesday, 10 November 1987

Concerning

CP EXPRESS AND TRANSPORT (CANPAR)

And

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

DISPUTE:

Concerns 45 demerits being issued to M. Grolla, CanPar, Driver Representative, Saskatoon, Saskatchewan, which resulted in his dismissal from Company service for alleged "falsification of Company documents pertaining to forged signatures on his April 16, 1987, delivery records."

JOINT STATEMENT OF ISSUE:

On April 21, 1987, Mr. M. Grolla was advised to attend a Q & A investigation to be held on Thursday, April 23, 1987, to determine causes and his responsibility concerning the alleged charges. He was also advised by D. Sikorsky, CanPar Terminal Supervisor, that he was being held out of service effective April 21, 1987, pending the investigation.

The position of the Union is that D. Sikorsky misused the words "forged" signatures and "falsification" of Company documents, and that when the statements of evidence obtained by D. Sikorsky are studied against the statements of evidence later obtained by M. Grolla, which were freely provided to M. Grolla by the same and other customers, they will completely contradict and overturn the sought after statements used as evidence by D. Sikorsky, who the Union says overstated his belief to such customers that fraud and theft were involved. The Union further states that the signatures obtained by M. Grolla from customers were never forged, nor were packages ever stolen by M. Grolla.

The position of the Company is that M. Grolla violated the Company policy of obtaining signatures, and denied the grievance.

The relief requested is that the grievance be allowed, that the 45 demerits be removed, that M. Grolla be reinstated immediately and he be paid wages/fringes, and be required to pay union dues from April 21, 1987, or in the alternative, any other relief considered appropriate.

FOR THE BROTHERHOOD

(SGD) J. J. BOYCE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) B. D. NEILL
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

B. P. Smeenk – Counsel, Toronto
D. J. Bennett – Labour Relations Officer, Toronto
D. Sikorsky – Terminal Supervisor, Saskatoon

And on behalf of the Brotherhood:

N. L. Jessin – Counsel, Toronto
J. J. Boyce – General Chairman, Toronto
M. Grolla – Grievor

AWARD OF THE ARBITRATOR

The Company's allegation, as reflected in the statement of dispute, is that the grievor falsified Company documents by forging signatures on his delivery records. The evidence, however, does not sustain the charge that the grievor forged signatures as alleged.

The grievor is employed delivering parcels in Saskatoon. Part of his responsibilities involves the completion of Delivery Record sheets for each day worked. The sheets contain the consignee's street address, the shipper's number and a package identification number. They also provide space for the driver to obtain the consignee's signature as well as a separate space for remarks. It appears to be common ground that it was the grievor's practice, as well as the practice of other drivers, to normally print the name of the signatory consignee in the space provided for remarks. It is also common ground that the reason for obtaining the consignee's signature, as well as a legible print of it, is to protect the Company against liability by allowing it to prove, in the event of any subsequent dispute, that the parcel in question was delivered.

The evidence reveals that over a period of time, on occasion, the grievor cut corners by printing himself the name of the consignee both in the space provided for the signature as well as in the remarks column. It appears, however, that he always did so with the knowledge and consent of the consignee or the consignee's agent. A number of statements filed by customers of the Company with apparently long standing relationships with the grievor, reflect such an understanding. On a careful review of the evidence, therefore, the Arbitrator cannot conclude that Mr. Grolla deliberately attempted to deceive or mislead either the Company or its customers by these occasional shortcuts in his record keeping. A cursory look at the delivery record reveals that the "signature" and printed portion are identical, in all cases being printed in the same handwriting.

The foregoing findings do not, however, fully exonerate the grievor. By his own admission, he knew that he was obliged to obtain the signature of someone receiving the goods on behalf of the consignee, and failed to do so. Moreover, his explanation that he was nevertheless providing the requisite documentation to prove receipt of the delivered goods is not convincing. Firstly, it appears that on some occasions he printed the names of business proprietors obtained from a receptionist or other employee, even though the proprietor was not himself or herself present to take delivery. Secondly, on occasion, when doing a number of deliveries in a single office building, he would fill in the sheet upon returning to his truck, mixing up the names of the appropriate consignees on the record sheet. The grievor's practice was plainly careless and in knowing contravention of the Company's procedures. While the evidence does not establish that any goods were lost or that the Company suffered any liability, the liberties which the grievor took with the recording system could plainly have had the effect of rendering the Company either unable to trace a delivery or liable for a claim for missing goods. Given the importance of the grievor's obligation in respect of record keeping, particularly as he functions in an unsupervised environment, his actions were deserving of a serious measure of discipline.

The Arbitrator has some difficulty accepting the Company's view that in all of the circumstances the imposition of forty-five demerits and the grievor's dismissal were justified. With six and a half years' service, the grievor's prior record stood effectively at fifteen demerits at the time of the instant infraction. Balancing the severity of the grievor's wrongdoing, which, in the Arbitrator's view is less serious than the acts of deliberate forgery disclosed in **CROA 1344**, against the grievor's prior record, I am satisfied that the reinstatement of the grievor, subject to a lengthy period of suspension, is appropriate in the circumstances. For these reasons the grievor's record shall be amended by the removal of the forty-five demerits imposed, and he shall be reinstated forthwith into his employment without compensation, and without loss of seniority.

Having regard to the facts disclosed in the instant case, as well as in prior grievances involving the grievor (**CROA 1712, 1711**) the Arbitrator recommends that the parties work together to attempt to improve the personal relationship between Mr. Grolla and his immediate superior, Terminal Supervisor Daryl Sikorsky. I remain seized of this matter in the event of any dispute between the parties respecting the interpretation or implementation of this award.

(sgd.) MICHEL G. PICHER
ARBITRATOR