

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1782

Heard at Montreal, Wednesday, May 11, 1988

Concerning

CANADIAN PARCEL DELIVERY (CP EXPRESS & TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The assessment of 15 demerits for a vehicle accident which resulted in the dismissal of employee G. Cormier of Moncton, New Brunswick.

JOINT STATEMENT OF ISSUE:

Employee G. Cormier was involved in a backing accident on October 19, 1987. Discipline in the amount of 15 demerits was assessed and this resulted in his having over 60 demerits and his dismissal.

The Union contends that this employee had a very good discipline record until only very recently and that a great number of demerits had been charged to his record in a very short time. The Union also contends that considering his work record and years of service, that to dismiss him for this accident is unjust and not warranted.

The Company contends that as Mr. Cormier was solely responsible for the accident assessment of 15 demerits was proper.

The relief requested is for the removal of the 15 demerits from Mr. Cormier's record and for his reinstatement without any loss of seniority or benefits.

FOR THE UNION:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

P. Thorup	– Counsel, Toronto
D. Bennett	– Labour Relations Officer, Toronto
P. Kendrick	– Regional Manager, CanPar Atlantic, Moncton
L. Killam	– Terminal Manager, Moncton

And on behalf of the Union:

N. Austin	– Counsel, Toronto
J. J. Boyce	– General Chairman, Toronto
M. Gauthier	– General Chairman, Montreal
G. Cormier	– Grievor

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied that the grievor was at fault in the accident which occurred in Sackville on October 19, 1987. It is not disputed that he backed into a vehicle while parking on a street, causing it to roll backwards into a second vehicle, which resulted in minor damage to all three vehicles involved. The grievor drove alongside the parked vehicles before proceeding ahead into the space in front of them. He was aware, or reasonably should have been aware, of their presence. In these circumstances the Arbitrator can attach no value to the grievor's statement that the accident was not his fault because the first of the two parked vehicles was not visible to him through his rearview mirrors.

The only issue is the appropriate measure of discipline. In this regard the grievor's recent prior disciplinary record is of some concern. Mr. Cormier was assessed 30 demerits for another accident which occurred on June 3, 1986 as he was manoeuvring his vehicle inside the terminal. The record reveals that within the space of two years Mr. Cormier was involved in two incidents where he left his vehicle unsecured (*see CROA 1781*) and three accidents while in the care and control of his vehicle. In the Arbitrator's view so negative a record justifies the imposition of a serious measure of discipline in respect of the culminating incident of October 19, 1987. By the same token, it does appear that during earlier years of service the grievor demonstrated the ability to be a good and productive employee with a positive safety record. In these circumstances the Arbitrator deems it appropriate to substitute a penalty less severe than discharge, while nevertheless giving effect to the Company's concern for the safe operation of its vehicles. The material establishes that the grievor stands senior to a number of employees presently employed as warehousemen or dockmen. The demotion of the grievor to a position in those classifications would, on the one hand, protect the Company's interest in the safe operation of its vehicles and, on the other hand, give the grievor protection in respect of his job security in view of his prior years of service. Such a demotion plainly does not foreclose the grievor from the possibility of returning to a driver's position at some future time should he satisfy the Company that he can again exercise the degree of care appropriate to that responsibility.

The grievance is therefore allowed, in part. The grievor shall be reinstated into such position of dockman or warehouseman as his seniority will obtain without compensation and without loss of seniority. I retain jurisdiction in the event of any dispute between the parties respecting the interpretation and implementation of this award.

13 May 1988

(signed) MICHEL G. PICHER
ARBITRATOR