

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1822

Heard at Montreal, Wednesday, 14 September 1988

Concerning

CANADIAN PARCEL DELIVERY (CP EXPRESS AND TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The assessing of 30 demerits to employee R. St. Germain, CanPar, Trois Rivières, Quebec.

UNION'S STATEMENT OF ISSUE:

On March 16, 1987, employee R. St. Germain was assessed 30 demerits for an alleged accident, for which the Union maintains there was no damage. It was a simple case of touching the wall of the terminal; no damage, whatsoever, was recorded to either the truck or the building. Under the circumstances, the Union requested the 30 demerits be removed from employee R. St. Germain's record, and he be reimbursed all monies lost while held out of service, and without loss of seniority and benefits.

The Company denied the Union's request.

FOR THE UNION:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

M. D. Failes	– Counsel, Toronto
D. J. Bennett	– Labour Relations Officer, CanPar, Toronto
R. Thibodeau	– Witness, District Manager, Quebec
M. Mongrain	– Witness, Driver Supervisor, Three Rivers

And on behalf of the Union:

L. Chahley	– Counsel, Toronto
J. Crabb	– Secretary/Treasurer, Toronto
M. Gauthier	– Vice-General Chairman, Montreal
R. St. Germain	– Grievor

AWARD OF THE ARBITRATOR

It is not disputed that Mr. St. Germain was involved in an incident on March 16, 1987 in which his vehicle touched a garage door railing at the Company's terminal in Trois Rivieres, Quebec. There is, however, disagreement as to whether any damage occurred. The grievor maintains that the very light contact between the front of his van and the rail caused no damage whatever. The Company, which bears the burden of proof in these proceedings, was unable to produce any evidence linking a very minor degree of damage to the rail, which its Terminal Manager discovered only two days later, with the incident involving the grievor.

In these circumstances the Arbitrator must conclude that an incident did occur, and that it did involve an error of judgement on the part of the grievor which would merit some discipline. While the grievor asserts that his foot slipped from the brake pedal because he had oil on the sole of his shoe, causing him to momentarily lose full control of his vehicle, I am satisfied that he must, at least in some measure, be accountable for the safe state of his own person during the operation of his truck, including the cleanliness of his shoes.

The grievor's disciplinary record is extensive, and stood at fifty-five demerits at the time of his discharge. In the Arbitrator's view, however, the nature of the culminating incident, and particularly the fact that the Company has been unable to prove any damage whatever, raises substantial question about the appropriateness of the discipline imposed. I am compelled to conclude that the accident in which the grievor was involved was of the most minor sort, perhaps more accurately characterized as an incident involving an error of judgement. In light of the grievor's extensive previous disciplinary record, however, some serious measure of discipline would not be inappropriate. Bearing in mind that this is the third minor accident in which the grievor was involved in the space of less than a year, the Arbitrator deems it appropriate to substitute a substantial suspension as a measure of discipline designed to impress upon him the need to correct his performance in this regard in the future, failing which he will face the most serious consequences.

The grievor shall therefore be reinstated, without compensation or benefits, and without loss of seniority, with his disciplinary record to stand at fifty-five demerits. The Arbitrator retains jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award.

September 16, 1988

(Sgd.) MICHEL G. PICHER
ARBITRATOR