

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1823

Heard at Montreal, Wednesday, 13 September 1988

Concerning

CANADIAN PARCEL DELIVERY (CP EXPRESS AND TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The dismissal of employee D. Walker, CanPar, Montreal, Quebec, on suspicion of theft.

UNION'S STATEMENT OF ISSUE:

On February 25, 1988, employee Danny Walker was performing his regular duties as a Dockman, preloading vehicles for the driving staff. During the course of his duties, Supervisor J. Salmon believed employee Walker was acting suspiciously and confronted employee Walker, and he was later charged with suspicion of theft.

The Union requested he be reinstated with full seniority and reimbursed all monies lost, due to the fact the Company never substantiated their charges.

The Company denied the Union's request.

FOR THE UNION:

(SGD.) J. J. BOYCE

GENERAL CHAIRMAN, SYSTEM BOARD OF ADJUSTMENT 517

There appeared on behalf of the Company:

D. D. Francis	– Counsel, Toronto
D. J. Bennett	– Labour Relations Officer, CanPar, Toronto
J. Salmon	– Preload Supervisor, Montreal
J. Crosby	– Linehaul Supervisor, Montreal

And on behalf of the Union:

G. Long	– Counsel, Toronto
J. Crabb	– Secretary/Treasurer, Toronto
M. Gauthier	– Vice-General Chairman, Montreal
D. Walker	– Grievor

AWARD OF THE ARBITRATOR

The outcome of this grievance resolves itself on the issue of credibility. Shift Manager J. Salmon testified that on the evening of February 25, 1988 he observed the grievor taking a large envelope with the return address of the Canadian Home Shopping Club from the package sorting bed. According to Mr. Salmon the grievor glanced furtively around and proceeded to walk in the direction of a loading dock where he turned, either to go between two trucks or into a truck, with the package in his hand. When Mr. Salmon proceeded to that location, in a time which he estimates at ten seconds, he met the grievor who was then walking towards him with nothing in his hands. After what Mr. Salmon characterized as several evasive answers, Mr. Walker was instructed by Mr. Salmon to go and get the envelope. After starting in a different direction, he turned and went into one of the trucks, emerging with the envelope which he gave to Mr. Salmon.

Mr. Walker testified that it was his intention to return the envelope to a supervisor, in conformity with the Company rule that such packages, which are known to contain valuable merchandise, are not to be handled within the regular sorting system by non-supervisory employees. He states that as he was proceeding to take the envelope to his supervisor he passed by a truck which he would be responsible for loading later in the evening and noticed that there were some packages strewn about within it. He states that he put the envelope down briefly inside the truck while he tidied up the packages, two of which he identified as misplaced and returned to an appropriate sortation belt. He states that he simply forgot the merchandise envelope in the truck when he finished his task.

The case turns on the credibility of the two witnesses. In the Arbitrator's view the testimony of Mr. Salmon must be preferred to that of Mr. Walker. Mr. Salmon, whose evidence was given in a careful and measured way, estimated that it would have taken him no more than ten seconds to move from the place where he had first stood when observing the grievor to the point at which he confronted him near the truck, when he no longer had the envelope in his hands. I accept that evidence, and find it impossible to accept the explanation of Mr. Walker that he had busied himself inside the truck for the time it would have taken for him to sort packages and tidy up the inside of the vehicle. On the whole of the evidence I am compelled to conclude that Mr. Walker did attempt to conceal a package which he knew would, in all probability, contain valuable merchandise, and which he knew employees were not supposed to handle.

In an enterprise such as the Company's, in which goods of all kinds are transported in large volume, and often in small packages, acts of theft or attempted theft are plainly intolerable, and inconsistent with the fundamental relationship of trust that underlies the contract of employment within this particular workplace. The evidence in this case does not disclose an impulsive act, taken on the spur of the moment. While the incident was not long in duration, the evidence reveals that the grievor went to the length of seeking out the parcel in the sorting bed, taking care to insure that he was not observed, and thereafter concealing it in a planned fashion within a truck, the loading of which would be his responsibility later in the shift. On the evidence before me I must conclude that the Company did have cause to terminate the grievor's employment and that the Arbitrator should not interfere with that decision.

For the foregoing reasons the grievance is dismissed.

September 16, 1988

(Sgd.) MICHEL G. PICHER
ARBITRATOR