

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1824

Heard at Montreal, Wednesday, 14 September 1988

Concerning

CANADIAN PARCEL DELIVERY (CP EXPRESS AND TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The assessing of 60 demerits to CanPar employees A. Dawkins, Montreal, Quebec, for alleged attempted theft.

UNION'S STATEMENT OF ISSUE:

On March 24, 1988, employee A. Dawkins was assessed 60 demerits for allegedly attempting to steal a parcel (attempted theft).

The Union maintains there was no clear evidence to the charge, and requested employee A. Dawkins be reinstated with full seniority, and reimbursed all monies lost while held out of service.

The Company maintains he was seen with the parcel, and refused 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, Witness
J. Crosby	– Linehaul Supervisor, Montreal, Witness

And on behalf of the Union:

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

AWARD OF THE ARBITRATOR

The Company's case rests on the report of Security Guard J. Taylor who purportedly saw the grievor throw a box, addressed to Birk's Jewellers, over a fence at the Company's Montreal terminal. It is not disputed that the incident occurred during a lunch break, when a number of employees were walking from the main terminal building towards the gate where the guard was stationed. The grievor, who testified at the hearing, denies any involvement with the apparent attempt by someone to steal the box, which contained goods with a retail value in excess of \$2,000.00.

The burden of proof in this matter is upon the Company. It must establish, on the balance of probabilities, that the grievor committed the act of theft, or attempted theft, which is alleged against him. The Company was able to call no direct evidence. It appears that Security Guard Taylor has since left his employment in that capacity, has moved to Western Canada and was unavailable to testify on the date of the hearing. There is, in other words, no direct evidence whatever to link the grievor with the attempted theft and rebut his sworn denial.

For these reasons the grievance must be allowed. The grievor shall be reinstated into his employment, with full compensation for all wages and benefits lost, and without loss of seniority. The Arbitrator retains jurisdiction in the event of any dispute between the parties in respect of the interpretation or implementation of this award.

September 16, 1988

(Sgd.) MICHEL G. PICHER
ARBITRATOR