

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1826

Heard at Montreal, Wednesday, 14 September 1988

Concerning

CANADIAN PARCEL DELIVERY (CP EXPRESS AND TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The assessment of 10 demerits for "vehicle abuse" and 20 demerits for "confrontation with another employee" to employee Frank Bourdage of Saint John, New Brunswick. The total of 30 demerits resulted in the accumulation of more than 60 demerits and the dismissal of Mr. Bourdage.

JOINT STATEMENT OF ISSUE:

On April 7, 1988, interviews were held with employee Bourdage concerning "misuse of Company trucks" and "getting along with fellow workers." Questions were asked, which Mr. Bourdage declined to answer, and statements were produced on both incidents. On April 8, 1988, demerits were assessed to Mr. Bourdage for each incident and the total number of 30 resulted in Mr. Bourdage having 89 demerits on his record and his dismissal on the same date.

The Union contends that the evidence used by the Company to support the charge of vehicle abuse was hearsay and pure supposition. This evidence was supplied by a man whose qualifications to make such a claim are questionable. The Union also contends that the truck in question was put into Canadian Tire to have the clutch repaired 2 days before the complete failure. It was returned with the claim that there was nothing wrong with the clutch. The Union also contends that the "confrontation" which resulted in the 20 demerits being assessed, was a trivial matter and nothing out of the ordinary. This was supported by the lead hand of the shift. The Union further contends that the other participant in the "confrontation", employee K. Carr, explained the incident to the supervisor and lead hand, and told them there was no problem and he wished no action to be taken. This was supported by a statement at a later date which was not accepted by the Company. The Union also contends that employee Bourdage was working under a great strain as Regional Manager P. Kendrick had made threats to "fire" him and had written a two-page letter to him listing conditions under which he would return to work after an earlier incident. The Union contends that the evidence supplied by the Company does not support the discipline nor the dismissal.

The Company contends that Mr. Bourdage received reasonable discipline for the infractions and considering his total record, he was properly dismissed.

The relief requested is for the return to work of Mr. Bourdage with full compensation and no 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:

M. D. Failes	– Counsel, Toronto
D. J. Bennett	– Labor Relations Officer, CanPar, Toronto
C. Hooton	– Witness
L. Hanson	– Witness
P. Kendrick	– Witness
S. Foster	– Witness

And on behalf of the Union:

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

AWARD OF THE ARBITRATOR

The Arbitrator accepts the evidence of Mr. Scott Foster that on March 29, 1988 the grievor was involved in an argument and physical altercation with fellow employee Keith Carr. I cannot accept the grievor's evidence that Mr. Carr was the sole aggressor, and that he took a swing at Mr. Bourdage simply because the grievor caused one of the packages destined for his truck to fall from a conveyor belt. The grievor states that Mr. Carr's action required him to shield himself with another parcel which he thrust at Mr. Carr, causing him to fall backwards into his truck.

While Mr. Carr was not called to testify, the written statement which he provided to the Company during the course of its investigation asserts that the grievor repeatedly ignored his requests to stop pushing Mr. Carr's packages off a conveyor and onto the terminal floor. Mr. Foster, who was standing next to Mr. Bourdage at the time, testifies that the incident was in fact triggered by the grievor's pushing of packages in the way described in Mr. Carr's statement, and his repeated refusals to stop his actions when requested to do so by Mr. Carr. Mr. Foster testified that it was the grievor who first thrust a package at Mr. Carr, with sufficient force that he fell backwards within his truck and that it was only then that Mr. Carr tried to take a swing at Mr. Bourdage. I am satisfied, on the balance of probabilities, that Mr. Foster's evidence is more reliable, and that his description of the sequence of events is more logical and plausible.

Because of my conclusions with respect to the altercation of March 29, 1988, I find it unnecessary to deal with the second aspect of the grievance, relating to the grievor's purported abuse of a Company vehicle, resulting in the destruction of a clutch. The disciplinary record of Mr. Bourdage is extensive, particularly within the last twelve months of his employment. In November of 1987, when his record stood at 59 demerits he was suspended for a period of three months for having withheld Company funds. When he returned to work, with the number of demerits unchanged, it was made clear to him that there must be a dramatic improvement of his performance and, among other things, that he must make serious efforts to improve his general rapport with other employees. Unfortunately, as the incident of March 29, 1988 discloses, Mr. Bourdage failed to meet that standard. The assessment of even five demerits against him for his involvement in the incident with Mr. Carr, who was also disciplined, would leave Mr. Bourdage in a dismissable position. Nor are there compelling factors in mitigation. The record discloses that the grievor has been subject to clear increments of progressive discipline, and that even a substantial suspension seems to have had little rehabilitative effect. In these circumstances the Arbitrator can see no reason to reverse the Company's decision to terminate the employment of Mr. Bourdage.

For these reasons the grievance must be dismissed.

September 16, 1988

(Sgd.) MICHEL G. PICHER
ARBITRATOR