

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1827

Heard at Montreal, Thursday, 15 September 1988

Concerning

CANADIAN PARCEL DELIVERY (CP EXPRESS AND TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The accumulation of more than 60 demerits by employee Richard Connell of Saint John, New Brunswick, and his subsequent dismissal from CanPar.

JOINT STATEMENT OF ISSUE:

On February 26, 1988, Mr. Connell was assessed 5 demerits for not following proper COD procedures, 10 demerits for improper delivery procedures and 15 demerits for an unsecured vehicle. This total of 30 was added to his previous total and it was indicated he now had a total of 85 demerits and he was dismissed from service.

The Union contends that the employee was confused by the markings on the COD label, to the extent that he thought he could take an ordinary cheque. The Union also contends that other mistakes of this nature had occurred around that same time period and the other employees had only been told to go back and get a certified cheque. On the improper delivery charge, the Union contends that delivery attempts and proper procedures were followed with this shipment. It was not the practice to inform someone if difficulties were being encountered in finding a house, out of sight of the road, and with a vague address. The Union contends that the employee followed the ordinary and proper procedures by recording his several delivery attempts on the parcel and by making phone calls. The Union contends that in the case of the unsecured vehicle, the employee informed supervisory people in the morning and in the evening that he did not have a lock for the truck that he was to drive on February 24, 1988. The Union contends that security at the Saint John terminal, being lax to the point of being nonexistent, led all employees to be less conscious of any responsibility to secure the vehicles, or freight, at the terminal. This was substantiated by the statement from the drivers that the warehouse door and the line haul trailer were left unsecured for long periods of time. The Union contends that this is very relevant point in this investigation. The Union further contends that three incidents that occurred in November 1987, should have been removed from the record of Mr. Connell as the supervisor made a "deal" and a verbal commitment to do that. Failure to do that resulted in an improper number of demerits being shown on his record. The Union also contends that charges of threats and harassment being made by Regional Manager P. Kendrick to employee Connell and the other employees, witnessed by all, led to an unfair investigation and an improper assessment of discipline.

The Company contends that Mr. Connell as dealt with in a manner consistent with the treatment of all other employees and that the discipline assessed in all cases was reasonable.

The relief requested is for the reinstatement of Mr. Connell 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:

M. D. Failes	– Counsel, Toronto
D. J. Bennett	– Labour Relations Officer, CanPar, Toronto
P. Kendrick	– Regional Manager, Atlantic Canada, Dartmouth
C. Hooton	– Operations Supervisor, Saint John

And on behalf of the Union:

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

AWARD OF THE ARBITRATOR

An initial issue arose at the hearing with respect to the status of the grievor's discipline record prior to the three incidents which led to his termination. On a review of the evidence in respect of that matter, the Arbitrator is satisfied that the position of the Union is substantiated. I find that on or about November 17, 1987 Company Supervisor Christopher Hooton communicated a verbal agreement to the grievor to the effect that three measures of discipline assessed against him that day would be rescinded. In the Arbitrator's view, when such arrangements are made, it is clearly incumbent upon the Company to produce clear and contemporaneous documentation to assist in any subsequent dispute as to what transpired. On balance, I must prefer the evidence of the grievor, who would have greater reason than Mr. Hooton who deals with a substantial number of employees, to more clearly recall the nature of their exchange, including the fact that he returned to Mr. Hooton the documentation in respect of all three items of discipline. Consequently I must find that as of November 17, 1987, and immediately prior to the culminating incidents of February 1988, Mr. Connell's disciplinary record stood at forty-five demerits.

I am satisfied that the Company's allegations in respect of all three failures alleged against the grievor are established in fact. It is clear that he failed to observe C.O.D. procedures on February 10, 1985 by accepting a non-certified cheque for payment on a delivery, contrary to the shipper's written instruction. I am also satisfied, absent adequate documentation for which the grievor was responsible, that he did fail to make adequate attempts to deliver a parcel which subsequently had to be delivered by another employee after the customer complained, and, lastly, that he failed to secure a vehicle overnight, having by his own admission forgotten that it contained parcels and knowing that the truck was unlocked.

The only issue is the appropriate measure of discipline in all of the circumstances. The grievor has been discharged for some substantial period of time. He has, moreover, demonstrated the ability to be a good and productive employee, having had thirty merits in 1986 for one year of accident and injury free service. In the Arbitrator's view the interests of rehabilitation are adequately served in the instant case if the grievor is reinstated into his employment, with his disciplinary record to stand at fifty demerits, on the clear understanding that any further disciplinary infractions may impact negatively on his job security.

The Arbitrator therefore orders that the grievor be reinstated forthwith, without compensation or benefits, and without loss of seniority, his record to stand at fifty demerits. I remain seized of this matter 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