

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1902

Heard at Montreal, Tuesday, 11 April 1989

Concerning

CANADIAN PARCEL DELIVERY (CP EXPRESS AND TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The issuance of fifteen (15) demerits to Vancouver Driver-Rep. T. Taylor for alleged unacceptable conduct towards a CanPar customer on or about the 3rd of November 1987.

JOINT STATEMENT OF ISSUE:

The Union maintains that the employee (Mr. Taylor) was in no way discourteous towards the customer on the date in question, and further, that the Company was in violation of the collective agreement when they failed to hold the interview within 14 days of the incident per the contract.

Clearly, the Company knew of this alleged matter on the 3rd of November because Mr. John Cafe (Company supervisor) spoke with the grievor about this incident and the customer complaint. Since the Company failed under the provisions of the agreement; the Union contends that the Company violated the terms of the agreement on two occasions. Firstly, by holding two interviews, those of November 3rd, 1987 and January 20th, 1988 and secondly, by violating Article 6.2 of the agreement.

FOR THE UNION:

(SGD) M. W. FLYNN

FOR: GENERAL CHAIRMAN, SYSTEM BOARD OF ADJUSTMENT 517

There appeared on behalf of the Company:

G. Despars	– Counsel, Toronto
F. McMullen	– Director, Human Resources, Toronto
G. Bodnarchuk	– Witness

And on behalf of the Union:

D. Wray	– Counsel, Toronto
J. Crabb	– Secretary/Treasurer, Toronto
M. Gauthier	– Vice-General Chairman, Montreal
A. MacDuff	– Vice-General Chairman, Winnipeg
S. T. Taylor	– Grievor

AWARD OF THE ARBITRATOR

The Union raises an issue with respect to timeliness. It submits that the time limits contained in the previous collective agreement should apply in the instant case, notwithstanding that they are not expressly contained in the collective agreement current at the time of the events giving rise to this grievance. The Arbitrator cannot accept the Union's position.

Quite apart from what may have been said between the parties during the course of discussions with respect to the timeliness of disciplinary steps under their new collective agreement, the facts reveal that in the instant case there were practical obstacles to the holding of a full disciplinary interview with the grievor, due principally to his absence from work for a substantial period of time. The letter of a corroborative witness, Mrs. Kennedy, was obtained on November 18, 1987. It is common ground that the grievor was then off duty and remained so for twenty-three days after November 18, as well as for two subsequent periods of time commencing December 29 and January 6 respectively. I am satisfied that in the circumstances there was no undue delay in the fact that the Company called the grievor for an interview on January 20, 1988 with respect to the incident in question.

The evidence before the Arbitrator establishes that on November 3, 1987 the grievor twice refused to deliver a C.O.D. parcel to Horizon Coach Lines in Vancouver. There is dramatic conflict in the evidence as to what transpired. Mr. Glenn Bodnarchuk of Horizon Coach Lines states that Mr. Taylor attended at his Company's premises to deliver a C.O.D. package but refused to show Mr. Bodnarchuk the package when asked to do so. The purpose of Mr. Bodnarchuk's concern was to know the source of the goods before undertaking to write a cheque for their delivery. According to Mr. Bodnarchuk, when he said that he wanted to see the parcel the grievor simply asserted that he must have a cheque first, and that it appeared that the customer did not want to accept delivery. The grievor then left without delivering the parcel, or revealing the name of the shipper, and was observed through the office window shouting obscenities from his truck as he left.

Following a call to the Company by Mr. Bodnarchuk complaining of the grievor's conduct, and the failure to deliver the package, Mr. Taylor was ordered to return to Horizon Coach Lines to deliver it. When he did so a second confrontation took place. While Mr. Bodnarchuk was obtaining his cheque book, having been told by the grievor who the shipper was, the grievor stated, either to Mr. Bodnarchuk or his shop foreman who had been summoned to come and get the package, the words to the effect of "So you think you're tough ... let's go outside and we'll see who's tough!" According to the customer's evidence, he then proceed to call Mr. Bodnarchuk an "ignorant son of a bitch" a phrase which he kept repeating in a loud voice until he left, once again with the parcel.

Upon a further complaint to the Company by Mr. Bodnarchuk the parcel was delivered, presumably by another employee, the following day. The day after that Mr. Bodnarchuk observed the grievor stopped in his van outside the office window, looking in and laughing, a sight which he relates distressed the female employees working there, some of whom had witnessed the previous incident. When the grievor again drove by and behaved in a like manner a second time within a week, Mr. Bodnarchuk became concerned and notified the police.

Mr. Taylor denies any wrongdoing. Contrary to Mr. Bodnarchuk's evidence, he asserts that when he went to his premises on the first occasion he had the parcel under his arm and showed him who the C.O.D. shipper was. He states that there were several beer bottles on Mr. Bodnarchuk's desk and that he was intoxicated and abusive to Mr. Taylor. According to the grievor's evidence he formed the opinion that Mr. Bodnarchuk was trying to obtain the package without paying for it, which is why he left without delivering it. Mr. Taylor relates that Mr. Bodnarchuk called him an "ignorant son of a bitch with a lousy fucking attitude".

Mr. Taylor states that on his second visit to the premises he did not stay to deliver the parcel because he felt threatened by two factors. The first was the presence of a dog, which he described as a bull terrier, in the office; the second was a comment which he attributes to the shop foreman who, he claims, said "Let's go outside, pal."

Lastly, with respect to the allegations that he was seen laughing through the office window, Mr. Taylor explains that on one or two occasions he parked his van on the street in front of the client's premises to engage in light banter with the female driver of a refreshment catering truck which serviced the area, as a result of which he may have been observed laughing.

The Arbitrator cannot accept the evidence of Mr. Taylor in so far as it conflicts with that of Mr. Bodnarchuk on issues of critical pertinence. The credibility of Mr. Bodnarchuk's account is supported by the fact that he did not summon his shop foreman to the front office until the grievor's second visit. That is consistent with his own account

that it was only then that he learned of the identity of the shipper, and realized that the parcel would be meant for his mechanic. This aspect of the evidence raises substantial doubt about the grievor's contrary assertion that he had the parcel with him when he first went and that he then showed the identity of the shipper to Mr. Bodnarchuk. A second area of doubt is raised with respect to the allegation of the inebriation of Mr. Bodnarchuk. Although he testified first, and was cross-examined by Counsel for the Union, there was no suggestion in any part of the cross-examination that there was liquor in evidence on the premises or that Mr. Bodnarchuk was intoxicated or otherwise exhibiting the behaviour of an unruly drunk. This self-serving aspect of the evidence was raised only in the grievor's own testimony, after Mr. Bodnarchuk, who travelled to the hearing from Vancouver, had left both the hearing room and the building. Having regard to the evidence of both witnesses, and their respective demeanours in the witness box, I am satisfied that the account of these events advanced by the grievor is not to be believed, and that the complaint registered by Mr. Bodnarchuk and his explanation of the events is candid and forthright. There is, moreover, no reason advanced why Mr. Bodnarchuk, who is external to the Company and a stranger to the grievor, would have any reason to have fabricated his account of these events.

In the circumstances the issuance of fifteen demerits to Mr. Taylor for unacceptable conduct towards a CanPar customer must be sustained. For these reasons the grievance is dismissed.

April 14, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR