

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1904

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 30 demerits and subsequent dismissal of Vancouver Driver-Representative, T. Taylor for alleged "indecent act" on or about October 19, 1988.

#### **UNION'S STATEMENT OF ISSUE:**

The union contends that no such allegation of an "indecent act" occurred and further, that the Company exceeded its authority in dismissing this employee.

The Union maintains that this driver had torn his work pants on the day in question, and was changing into a spare pair when he was observed by the company supervisor, Mr. Kilbride.

The Company maintains that this driver was performing an "indecent act" in full view of the supervisor and another employee and to date has maintained that the demerits issued were warranted.

The Union maintains that the demerits were unwarranted and excessive, and has requested the Company to remove them and return this employee to work immediately without loss of benefits.

#### **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 |
| K. Kilbride | – Driver Supervisor, Vancouver       |

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 testimony of a supervisor, corroborated by the written statement of a fellow employee, is to the effect that Mr. Taylor 'mooned' them while he was on duty on a busy Vancouver Street. Driver Supervisor Kerry Kilbride states that on October 19, 1988 he was training employee Nigel Fields in a truck which he parked behind the grievor's vehicle on Pender Street between Howe and Granville in the downtown business section of Vancouver. The evidence of Mr. Kilbride, corroborated by the written statement of employee Field, is that as the had just pulled in the grievor, Mr. Taylor, looked at them through the rear window of his van, pressing his face against the glass, and that he then turned around and exhibited his bare rear end pressed against the back window of the vehicle, for a time estimated to be approximately ten seconds.

According to Mr. Kilbride the grievor then drove away before he could speak with him, and they saw each other only later at the Company's terminal. When Mr. Kilbride asked the grievor what he thought he was doing by pressing his rear end against the window, he states that the grievor replied that he thought that fellow employee Peter Gallant was driving the van, and that it was only meant as a joke. It is common ground that Mr. Kilbride was driving in territory normally serviced by Mr. Gallant.

The grievor denies any wrongdoing. According to his evidence he tore his trousers during the course of a parcel delivery and was in the process of changing his pants in the rear of his van when he must have been observed by Mr. Kilbride.

The Arbitrator finds the grievor's explanation incredible. His suggestion that his response to Mr. Kilbride about Mr. Gallant afterwards was mere sarcasm, contrasted with the measured account of these events given by Mr. Kilbride, and the supporting written statement of a bargaining unit employee thoroughly undermines the reliability of Mr. Taylor's self-serving account of these events.

At the time of this incident Mr. Taylor's disciplinary record stood at forty demerits. The seriousness to the Company's public image of an act of sophomoric indecency in a busy public street is obvious. In this case the severity of the grievor's prior record, accumulated over a relatively short period of some three years' service, does little to help justify the use of the Arbitrator's discretion to substitute a lesser penalty. Lastly, his lack of candour in dealing both with the Company and the Arbitrator leaves little alternative in the circumstances. For these reasons I must find that the thirty demerits assessed against the grievor were justified, and that there are no mitigating factors to justify a reduction of the penalty in the circumstances.

For these reasons the grievance must be dismissed. The conclusion arrived at in this matter is, of course, without prejudice to the right of Mr. Taylor, such as it may be, in respect of the policy grievance pending regarding the productivity discipline of employees in Vancouver.

April 14, 1989

**(Sgd.) MICHEL G. PICHER**  
**ARBITRATOR**