

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2195

Heard at Montreal, Thursday, 10 October 1991

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The dismissal of CanPar employee G. Causton, Concord, Ontario, for allegedly withholding Company funds (Rule 10).

JOINT STATEMENT OF ISSUE:

On September 27, 1990, a shipment was delivered to Victoria Impressions, which carried a C.O.D. of \$37.17. The monies were never received by the Company.

Inquiries were received from the shipper on or about January 9, 1991, as to the reasons the monies were not remitted.

An interview was conducted January 24, 1991, by CanPar District Manager Brian Sullivan, which resulted in employee Causton's dismissal on January 25, 1991.

The Union grieved the dismissal requesting he be reinstated with full seniority and reimbursed all monies lost plus interest and all benefit plans, as the charges were not substantiated.

The Company denied the Union's request.

FOR THE UNION:

(SGD.) J. J. BOYCE
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) P. D. MACLEOD
DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

M. Failes – Counsel, Toronto
P. D. MacLeod – Director, Linehaul & Safety, Toronto
D. Tomlinson – Witness

And on behalf of the Union:

D. McKee – Counsel, Toronto
J. Crabb – Executive Vice-President, Toronto
M. Gauthier – Vice-President, Montreal
G. Causton – Grievor

AWARD OF THE ARBITRATOR

In the Arbitrator's view the documentary evidence tendered supports the finding, on the balance of probabilities, that a cash payment of \$37.17 was received by Mr. Causton for the delivery of the package on September 27, 1990. The signature of the consignee which appears on the grievor's delivery record for that day, as well as a letter from the customer to the same effect, are, at the least, *prima facie* evidence that a cash payment was received by the grievor at the time of the delivery. In the circumstances, it is incumbent upon him to give some explanation to explain the discrepancy, particularly as the delivery in question represented his only cash receipt for the day.

At the arbitration hearing the grievor gave an explanation of the events of September 27, 1990 which was substantially detailed, and appears to differ greatly from his response at the time of the Company's investigation conducted on January 24, 1991. At that time he advised his supervisors that he could not remember the events surrounding the delivery, and no record of any further elaboration of the events appears in the notes taken with respect to the content of that meeting. On the whole, in these circumstances, the Arbitrator finds implausible the more recent explanation of Mr. Causton that on the day in question he was running late, and that when the customer approached his truck to ask if he had a parcel for him, he handed him both the parcel and his clipboard with his delivery record sheet, which the customer supposedly filled out while he made a collection at another nearby customer. Given the grievor's account that he was not familiar with the consignee of the C.O.D. delivery, his account of the transaction seems highly unusual.

The thrust of the evidence before the Arbitrator, based principally on the grievor's own delivery record, is that on September 27, 1990 he delivered over to a customer a package which was to be released only on the payment of a C.O.D. amount of \$37.17. The statement of the consignee, albeit in the form of a hearsay letter, is to the effect that he paid the amount to Mr. Causton in cash. The need of the Company to rely upon the trustworthiness of its employees who are charged with cash collections can scarcely be disputed. Their ability to handle that task, whether on the basis of integrity or mere competence in record keeping and the careful handling of money is an essential attribute to their employment. In the instant case the Arbitrator is compelled to conclude that the grievor has not provided a good and sufficient explanation for the failure to deliver over to the Company the monies which, I am satisfied on the balance of probabilities, he received from the customer. In the circumstances I am satisfied that the discipline assessed was appropriate, and that the grievance must therefore be dismissed.

11 October 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR