

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2309

Heard at Montreal, Wednesday, 9 December 1992

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

A matter involving the issuance of 20 demerits to Vancouver employee, K. Butcher for the alleged "falsification of work records resulting in theft of Company time", which resulted in the termination of this employee for accumulation of more than 60 demerits.

UNION'S STATEMENT OF ISSUE:

The Union, during the grievance process, raised the cogent argument in review of the case file material that its position should logically succeed given that Company officials failed to provide the grievor with a "fair and impartial" interview.

The Union contends that the interview process contemplated under the terms of the present collective agreement requires that interviews are to be conducted with fairness and impartiality.

The Union maintains that the evidence adduces that the Company violated these tenets by holding an interview which was directly controlled by the same Company official whom had allegedly witnessed the act, and was instrumental in bringing the charges against the grievor through written notification.

Additionally, the Union contends that the statements introduced by the two (2) Company officials were contradictory, and that the grievor's version, which is supported by another driver holds greater credibility.

To date, the Company has declined the Union's request that the employee be returned to work, and that the demerits issued by justly removed.

FOR THE UNION:

(SGD.) M. W. FLYNN

FOR: EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

M. D. Failes	–Counsel, Toronto
P. D. MacLeod	–Director of Terminal, Toronto
D. Dobson	–Witness
R. Wettstein	–Witness

And on behalf of the Union:

F. Luce	–Counsel, Toronto
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J. Crabb –Executive Vice-President, Toronto
D. Elickson –Counsel, Toronto
B. Thorner –Witness
K. Butcher –Grievor

AWARD OF THE ARBITRATOR

The principal facts pertinent to the grievance are related in **CROA 2308**, a grievance heard concurrently with this matter. On the whole of the evidence the Arbitrator cannot accept the explanation given by Mr. Butcher for the time which he claimed to have worked on March 13, 1992. In particular, I cannot accept that he required twenty-five minutes to drive the relatively short distance from the Burnaby terminal to the Brentwood Mall between 9:00 and 9:25 a.m. on that day. Nor can the Arbitrator accept his explanation for the apparently inconsistent entries which he made with respect to delivery times on that date. The Arbitrator is satisfied that the evidence of Supervisors Dan Dobson and Ralph Wettstein represent a truthful and reliable account of the events as they occurred.

Nor can the Arbitrator find any violation of the collective agreement in the manner in which the interview of Mr. Butcher was conducted, when it was taken by Mr. Wettstein. Significantly, the collective agreement provisions relating to the conduct of disciplinary interviews were recently amended, and the present terms contain no prohibition as to the identity of the Company officer who conducts an interview. While it is true that Mr. Wettstein was himself an observer of a part of the events in question, it is equally true that he brought those observations to the attention of Mr. Butcher during the course of the investigation, giving him every opportunity to explain or rebut. Moreover, there is very little substantial difference in the facts advanced by Mr. Wettstein, as compared with those advanced by Mr. Butcher, save perhaps for a span of five minutes in the time of Mr. Butcher's arrival at the mall, and five minutes in respect of his departure. Insofar as Mr. Butcher was given every opportunity to respond to the allegations made, the Arbitrator cannot sustain the position of the Union that there was a violation of the standards of fairness implicit in the interview process as contemplated under the terms of the collective agreement. In the Arbitrator's view, both the collective agreement and the facts at hand are to be distinguished from those disclosed in **CROA 2041**.

Unfortunately, Mr. Butcher does not come to these proceedings with a positive disciplinary record. On September 13, 1991, by an order of this Office, he was reinstated into his employment, without compensation, with his record standing at fifty-five demerits, as a result of an earlier incident deserving of discipline (**CROA 2178**). In my view, the assessment of twenty demerits was within the appropriate range of discipline for the deliberate or reckless falsification of his time records on the date in question. There being no compelling reason for mitigation of that penalty, the grievance must be dismissed.

December 15, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR