

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2419

Heard in Montreal, Thursday, 11 November 1993

concerning

CANADIAN PACIFIC EXPRESS & TRANSPORT

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The assessment of five (5) demerits to CPET employee William Barker, Belleville, Ontario.

UNION'S STATEMENT OF ISSUE:

Employee William Barker was advised in writing dated June 10, 1992 five (5) demerits were being assessed for a Citizen's complaint concerning his operation of commercial equipment on city streets on May 25, 1992.

The Union asserts that the evidence presented by the Company was only hearsay by the driver of the car and no consideration was given to the explanation of the incident by William Barker or Union Steward Gary Beebe.

The Union requested the five (5) demerits be removed from Employee Barker's record.

The Company declined the Union's request.

FOR THE UNION:

(SGD.) J. BECHTEL
EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

M. D. Failles – Counsel, Toronto
B. F. Weinert – Director, Labour Relations, Toronto
W. Sharpe – Terminal Manager, Belleville

And on behalf of the Union:

D. W. Ellickson – Counsel, Toronto
D. J. Dunster – Executive Vice-President, Toronto
G. Rendell – Divisional Vice-President, Ottawa
A. Dubois – Divisional Vice-President, Quebec
Wm. Barker – Grievor

AWARD OF THE ARBITRATOR

The grievor attended at the hearing and was prepared to testify in support of his statements to the effect that, contrary to a complaint made by an individual about his driving on May 25, 1992, he did make proper stops of his vehicle at the two intersections in question. The contrary evidence relied upon by the Company is, as the Union asserts, entirely hearsay. No witnesses were called by the Company or made available to support the allegations at the hearing. In the circumstances the Arbitrator is compelled to conclude that the direct evidence which was available through Mr. Barker is to be preferred.

For these reasons the grievance is allowed. The five demerits assessed shall be struck from the grievor's record.

12 November 1993

(Sgd.) MICHEL G. PICHER
ARBITRATOR