

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2421

Heard in Montreal, Thursday, 11 November 1993

concerning

CANADIAN PACIFIC EXPRESS & TRANSPORT

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The three (3) day suspension to CPET employee William Barker, Belleville, Ontario.

UNION'S STATEMENT OF ISSUE:

Employee William Barker was advised in writing dated October 26, 1992 that he was suspended for three (3) days for an alleged incident with a customer on October 23, 1992.

The Union asserts that no evidence to substantiate this claim was presented by the Company at the interview to warrant a three (3) day suspension.

The Union requested the three (3) day suspension be removed and William Barker be paid.

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. Failes – 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 record reveals that on October 21, 1992 the grievor was involved in delivering parcels in the Quinte Mall in Belleville. He delivered through a set of double doors which he normally used to access the premises. Because the inner doors swung outwards, so that he could not push his way through them, he propped them open for the time required to complete his deliveries. This left the outer doors closed, save when he would enter with a load of parcels.

It appears that Ms. Freda Way, an employee of a "Just Kids" store located near the doors asked the grievor to leave the inner doors closed, because leaving them open caused a chill in her store. According to Ms. Way's complaint, apparently made by telephone to Mr. Sharpe, upon learning that Ms. Way objected to the doors being open, Mr. Barker yelled to someone else in the mall "Is she complaining again?". It appears that these comments were overheard by customers in her store, causing embarrassment to her.

Although Ms. Way was not called as a witness, and no direct evidence originated from the Company on this issue, the grievor himself has given an account of what transpired. Mr. Barker does not deny that Ms. Way complained about his use of the doors on the day in question. Moreover, his own account of events confirms that he declined to close them, as she wished. Mr. Barker's position, reflected in his statements to the Company and in the Union's submission to the Arbitrator, is that he had the mall manager's permission to stop the doors as he had done. While that may be true, the fact remains that, even by his own account, he allowed a confrontation to develop between himself and a shopping mall tenant when the confrontation could have been entirely avoided by simply complying with the individual's request. I am satisfied, accepting the facts as presented through Mr. Barker, that he did fail to exercise the degree of tact and consideration with a member of the public which the Company was entitled to expect of him, particularly after the warnings which he had received in the past. In the circumstances the Arbitrator is satisfied that the grievor's suspension was not unwarranted, and that the facts disclosed do not merit a reduction of the penalty assessed.

For the foregoing reasons the grievance must be dismissed.

12 November 1993

(Sgd.) MICHEL G. PICHER
ARBITRATOR