

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3227

Heard in Montreal, Wednesday, 12 December 2001

concerning

CANPAR

and

**UNITED STEELWORKERS OF AMERICA (LOCAL 1976)
(TRANSPORTATION COMMUNICATIONS UNION)**

DISPUTE:

Ottawa employee S. Glazer was held out of service for three (3) days, and assessed twenty (20) demerits, as a result of a customer complaint alleging attempted theft while performing a delivery at their premises, on or about May 10, 2001.

JOINT STATEMENT OF ISSUE:

The Union contends that while performing a delivery at Rose Draperies, Mr. Glazer inadvertently knocked over a coat rack upon which a purse was hung. While trying to put back the purse, the manager entered the room and suspected that Mr. Glazer was attempting to steal from the purse. It is not disputed that no items or cash was missing from the purse. The customer subsequently placed a verbal complaint with the Company and submitted a written complaint shortly thereafter.

The Union argued that there was no proof of this alleged incident and that there was no justification for this discipline whatsoever.

The Company denied all the Union's request. In addition, the Company claims the step 1 grievance was untimely. The Union disputes that allegation.

FOR THE UNION:

(SGD.) D. J. DUNSTER
STAFF REPRESENTATIVE

FOR THE COMPANY:

(SGD.) P. D. MACLEOD
VICE-PRESIDENT, TERMINAL OPERATIONS

There appeared on behalf of the Company:

P. D. MacLeod	– Vice-President, Terminal Operations
R. Dupuis	– Regional Manager, Quebec
R. Gaudreaut	– Supervisor, Ottawa
R. Derouchie	– Manager, Ottawa
T. Idone	– Witness

And on behalf of the Union:

D. J. Dunster	– Staff Representative, Ottawa
J. Schock	– LPC Unit 2344
S. Glazer	– Grievor

AWARD OF THE ARBITRATOR

The Company maintains that the Union failed to meet the time limits in the collective agreement for filing and progressing a grievance. With respect to the issue of timeliness, the arbitrator is satisfied that this is an appropriate circumstance to exercise the discretion vested by the **Canada Labour Code** to allow an extension of time limits, as no real prejudice is disclosed.

The grievor was assessed twenty demerits for what, in a letter dated May 17, 2001, the Company's supervisor, Mr. Ron Gaudreault, described as having placed himself in a compromising situation. In that regard he was referring to an incident which took place at a customer's store, the facts of which caused the customer to believe that the grievor had the intention to steal from a purse.

Both the grievor and the customer testified at the arbitration. When Mr. Glazer, who was not operating on his normal parcel delivery route, arrived at the customer's drapery shop on Richmond Road in Ottawa, while making his deliveries on May 10, 2001, he found no one in the show room, or in two adjacent offices located at the back of the showroom. In fact the operator of the store, Mr. Tony Idone, was in a washroom located at the back of an adjacent storeroom when Mr. Glazer entered the shop. According to Mr. Idone's testimony, which the Arbitrator accepts on this point, one or two minutes passed before he was able to return to the shop and office area from the washroom. Mr. Idone relates that when he did so, he saw the grievor standing in the entranceway to the rearmost of the two offices, immediately adjacent to a coat tree upon which a purse was hanging. He states that he saw the purse to be open, and immediately asked the grievor what he was doing. Mr. Glazer responded that he was doing nothing, whereupon Mr. Idone immediately challenged him, stating that he was trying to steal from the purse, which apparently belonged to Mr. Idone's mother, who was in an upstairs location. Mr. Glazer denied the accusation.

The grievor relates that when he entered the office and saw no one there, he turned and inadvertently knocked the clothes tree over with the clipboard which was in his hand. He also believes that he was also then holding the bolt of fabric which he was delivering, although he does not claim that it caused the upset of the clothes tree. He does not deny that the purse was open when Mr. Idone first saw him in the doorway adjacent to the vertical coat rack, a condition he says was caused by the upsetting of the coat rack. It is common ground that nothing was missing from the purse, although in Mr. Idone's recollection there were bills sticking out from the top of it.

It is clear to the Arbitrator that Mr. Idone is firm in his belief that he caught the grievor trying to steal from his mother's purse. No amount of explanation by the grievor has dissuaded him from that view, a view which caused him to write a formal letter of complaint to the Company. That letter of complaint and a subsequent investigation caused the Company to assess discipline against Mr. Glazer in the form of twenty demerits, for having caused the customer complaint by placing himself in a compromising position.

The Arbitrator readily understands the perception of Mr. Idone and the difficulty encountered by the Company. It is obviously difficult to discount entirely the possibility that what Mr. Idone came upon was an attempt to steal. However, as is evident from the testimony related above, the evidence in this matter is entirely circumstantial. Mr. Idone, whom I take to be an honest witness, could not and did not testify that he saw the grievor's hands on or inside the purse, nor did he observe him in the moments immediately prior, when Mr. Glazer said that the coat tree was upset by contact with his clipboard.

An allegation of theft, or attempted theft, is obviously serious, touching as it does on criminal or quasi-criminal conduct. In this matter, as in any case of discipline, the burden of proof is upon the Company, and must require clear and cogent evidence, given the seriousness of the charge. To the extent that the evidence is entirely circumstantial, the Company's burden is not discharged if the evidence, taken as a whole, is as consistent with the possibility of innocence as with the possibility of guilt. That, in the Arbitrator's view, fairly describes the nature of the evidence before me in the grievance at hand. While I can understand the strong suspicion held by Mr. Idone, and to some extent apparently shared by the Company, an arbitrator cannot base discipline for just cause upon suspicion, however strong (**CROA 2561, 2771 and 2847**). On the whole, the evidence does not establish, on the balance of probabilities, that Mr. Glazer was caught in an attempt to steal, or that he otherwise placed himself in a compromising situation so as to justify any discipline. The grievance must therefore be allowed.

The Arbitrator directs that the twenty demerits assessed against the grievor be removed from his record forthwith.

December 19, 2001

(signed) MICHEL G. PICHER
ARBITRATOR