

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.187

Heard at Montreal, Wednesday, November 12th, 1969

Concerning

CANADIAN PACIFIC EXPRESS COMPANY (CP EXPRESS)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT
HANDLERS
EXPRESS AND STATION EMPLOYEES

DISPUTE:

Employee J. G. Boivin, Tractor Trailer Driver, Montreal, Quebec, be returned to work, with payment for loss of wages, and, the 30 demerit marks issued against his record be cancelled.

JOINT STATEMENT OF ISSUE:

April 1st, 1969, the employee was dispatched, after he reported for duty at 8:00 a.m., with a tractor trailer load to General Footwear Limited, 554 Montee De Liesse Road. Enroute the transmission of tractor #2163 broke down on an incline.

At approximately 10:20 a.m., employee Boivin advised his dispatcher of the breakdown and the Company tow truck was dispatched to return the unit to the garage.

Mr. Faucher on Mr. Lovett's instruction informed the employee he was suspended and to punch out, time 11:16 a.m.

Later that same day employee Boivin appeared in the office accompanied by a Brotherhood Representative, at which time he was advised he was dismissed.

FOR THE EMPLOYEES:

(SGD.) L. M. PETERSON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) W. J. BOWERS
VICE-PRESIDENT & GENERAL MANAGER

here appeared on behalf of the Company:

F. Adlam	Industrial Relations Representative, C.P. Express - Toronto
G. Hare	Manager Contract Services, C.P. Express - Toronto
H. Lovett	Terminal Manager Contract Services, C.P. Express - Montreal

And on behalf of the Brotherhood:

L. M. Peterson	General Chairman, B.R.A.C., Don Mills, Ontario.
F. C. Sowery	Vice General Chairman, B.R.A.C., Montreal

AWARD OF THE ARBITRATOR

The grievor was discharged because, with the addition of the 50 demerit marks assessed for the incident in question, he had accumulated a total of more than 30 demerit marks, and was thus, in conformity with the company's practice, subject to discharge. If, on the facts before me, this "culminating incident" were established as justifying discipline, and if the assessment of 30 demerit marks were appropriate, then it would be proper to consider the grievor's record of discipline, and in the circumstances of this case it would be my view that the grievor was properly discharged. There is no doubt that his employment record is poor. The first question which I must determine, however, is whether he was properly disciplined for the incident of April 1, 1969, and on this question his past record is not relevant.

The grievor reported for work at 8:00 a.m., picked up his load and left the company's yard, in downtown Montreal at about 8:10 a.m. His own statement is that his truck broke down, on an incline on Panet Street, not far from the yard, at about 8:20 a.m. He was unable to advise the dispatcher of the breakdown until 10:20 a.m., because it was necessary for him to remain in the cab of his vehicle with the engine running in order to maintain pressure on his brakes. The company agrees that, having broken down on an incline, the grievor behaved properly in not leaving his vehicle. It is said that the delay in reporting was due to his inability to attract attention and make arrangements to have the vehicle moved.

The company's case is based on the fact of the grievor's presence on Panet Street. Its suspicions were particularly aroused because the grievor's home is on Panet Street, and the breakdown occurred only a short distance from there. There is no confirmation of the time when the breakdown occurred, apart from the grievor's own statement. The suspicion is, of course, that the grievor, after picking up his load, went to his home and spent some time there before proceeding on his way. There is considerable Justification in the facts for this suspicion, for the route he followed, it is said, was not reasonable, and the amount of time said to have been spent trying to attract assistance was beyond belief.

The grievor denies having stopped at his home, and the union asserts that the route he followed was reasonable. The matter can only be resolved by a consideration of the circumstances. I shall consider first the matter of the route taken, and second, the matter of undue delay. At the request of the company, and with the concurrence of the parties, I examined (together with representatives of the parties) the route followed by the grievor on the morning in question. When the grievor picked up his load, he was situated at the eastern end of the company's yard, from which a ramp leads up to Notre Dame Street, at the very foot of Panet Street. In my view it

was quite reasonable for the grievor to have left the yard by this exit, rather than by travelling through the yard for the equivalent of several blocks to the Berri Street entrance. In either event, the grievor could have proceeded a very short way up either Berri Street or Panet Street to Craig Street. Craig Street is a principal east-west thoroughfare, and it is the company's view that the best route for the grievor then to have taken was west along Craig Street to University Street, thence south on University Street onto the Bonaventure Autoroute. The grievor's destination was in the vicinity of the Montreal airport, and travel via the Autoroute would be a convenient and natural route to it. There are, however, no established routes to be followed, and it was not suggested that the grievor did wrong in choosing a route through the city. A route through the centre of the city and then along the Metropolitan Expressway would have been practical. Such a route might perhaps have been shorter than a route via the Bonaventure Autoroute; on the other hand, it might have taken longer. In any event it is the company's view that it was particularly strange that the grievor should choose to proceed north through the city via Panet Street, rather than by one of the principal thoroughfares such as Berri Street.

Although the grievor came out of the company's yard at Panet Street, he could not proceed directly north on it, because it was blocked by construction north of Craig. He could have gone up Panet Street and then turned left on Craig, either to proceed through the city or via the Autoroute. Instead, he turned right at Craig Street and proceeded east to Papineau Avenue, thence north as far as Dorchester, where he turned left.

It may be argued that this route was reasonable thus far, if he were proceeding through the city. In rush hour traffic, it might have been easier not to turn left on Craig Street at Panet, and if he was taking the route through the city, Dorchester was slightly preferable to Craig. In any event, it is my view that as he was proceeding west along Dorchester, he could not be said to have gone out of his way. From that point on, it might be thought that the best route was to take one of the principal thoroughfares northbound, in the direction of the Metropolitan Expressway. It was suggested that St. Denis Street, or Berri Street would be best. Instead, the grievor went north via Panet Street, passing his own home. Panet Street runs parallel to St. Denis or Berri Streets, and nothing was lost in the way of mileage by taking this route. Panet Street is, however, a narrow street, with a number of stops at intersecting streets. It would not be said to be the obvious route. On the other hand, it is a one-way street, and having regard to the general flow of traffic at that time of day, it might be that a driver familiar with the area would consider it a good route to take. In my view, the matter is a debatable one. The company leaves the choice of route to its drivers, and unless the driver has clearly gone out of his way, or taken a plainly unreasonable route, he is not subject to discipline even if another route might be preferred by some. In this case, the route taken, while subject to question, was not so clearly unreasonable or out of the way as to be a cause for discipline. Accordingly, I am unable to conclude that the grievor was properly disciplined on this account. The grievor was assessed 10 demerit marks for "leaving regular route", and these should be struck from

his record.

The balance of the 50 demerit marks, that is 20 marks, was assessed for "loitering on duty". This charge is based, as I have noted, on the substantial length of time which elapsed between the time the grievor left the yard, and the time he reported the breakdown to the dispatcher. It may be observed that on the grievor's own statement, he left the yard at about 8:10, and his vehicle broke down on Panet Street at 8:30 a.m. In the union's brief, it is stated that he had left the yard at 8:30, although I do not think anything turns on this difference. In any event the truck did break down. It is said that at approximately 9:20 a.m. a motorcycle policeman stopped and required of the trouble, and ordered a city tow truck, which arrived at approximately 10:20 a.m. The vehicle was moved to a safe place, and the grievor then called his dispatcher, who sent a company tow truck.

In my view, and having regard to all of the circumstances, the grievor has not provided a satisfactory account for the lapse of time preceding his notification to the company that his vehicle had broken down. It strains credulity too much to believe that the grievor was unable to notify the company of the situation before 10:20 a.m. Indeed on his own account, it would appear that he might have done so, for he was speaking to a policeman at least by 9:20 a.m. Next to the safe custody of his vehicle, it is clear that his duty was to notify the company of his situation. That he could not have done so sooner simply cannot be accepted. Whether he had in fact spent some time in his home (which he denies) need not be considered; it is sufficient to say that he has not accounted for his time adequately, and that in the circumstances an account was called for. Discipline on this score, therefore, was Justified. This was the second offence of this nature within one year, and I am unable to conclude that the assessment of 20 demerit marks was unreasonable. The total demerits on the grievor's record then totalled 60, and he was subject to discharge.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR