

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 525

Heard at Montreal, Wednesday, September 10, 1975

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED
(C.P. TRANSPORT)

and

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

DISPUTE:

The extent of discipline awarded to employee J. Stratichuk, Winnipeg, Manitoba.

JOINT STATEMENT OF ISSUE:

Employee J. Stratichuk was permanently suspended on April 11, 1975, from all driving duties while employed by CP Transport.

The Union contend neither the employee's past record nor the circumstances of the accident warranted such severe and permanent discipline.

The Company contends the discipline was warranted in view of the circumstances of the accident and Mr. Stratichuk's record.

FOR THE EMPLOYEE:

(SGD.) L. M. PETERSON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) C. C. BAKER
DIRECTOR, LABOUR RELATIONS
AND PERSONNEL

There appeared on behalf of the Company:

C. C. Baker - Director, Labour Relations & Personnel, CP
Transport, Van.

And on behalf of the Brotherhood:

L. M. Peterson - General Chairman, B.R.A.C., Toronto
G. Moore - Vice General Chairman, B.R.A.C., Toronto

AWARD OF THE ARBITRATOR

The grievor is an employee of some twenty-five years' seniority, and was classified as a highway tractor driver. There is no evidence of

a record of discipline nor, except during the few months preceding the incident in question, of a bad driving record.

The grievor was prohibited from driving company vehicles following an incident on April 5, 1975, when his vehicle went across the centre strip of a highway into the ditch on the left side of the road. The grievor had been involved in two preceding incidents, involving a similar pattern, on December 4, 1974 and November 1, 1974.

It was the company's position that the grievor was not disciplined, but was simply considered to have become incapable of safe operation of company vehicles. In my view, the limitation imposed on the grievor's work opportunities is essentially a disciplinary matter, but even if it is not characterized that way, it would be necessary for the company to establish proper justification for the action it took.

From the material before me it would appear that the three incidents referred to do reveal, to some extent, poor driving practice on the grievor's part, although the other contributing causes to those incidents are not clear. In all of the circumstances, the company would have been justified in imposing some discipline, or some driving limitations, on the grievor. It was apparently considered that he might be discharged, but there was clearly no ground for this.

As it is, the perpetual restriction of his driving any company vehicle is, in my view, an unjustified response to the situation, particularly where the grievor has had a record of successful driving for many years. There has been no proof at all to the effect that the grievor could not drive any vehicle safely. The company's action seems to have been based on the conclusion that the grievor had fallen asleep while driving. The pattern of the accidents which he had would support this conclusion, although the evidence is not conclusive. There would thus be a rationale for restricting the grievor from highway driving. It is difficult to see any justification for a further restriction.

Accordingly, it is my conclusion that the restriction placed on the grievor was not justified, although a lesser restriction would have been proper. It is my award that the grievor be restricted from highway driving for a period of one year, ending April 5, 1976. He shall, however, be entitled to exercise his seniority with respect to any other position, including any driver's position, for which he qualifies. He is entitled to compensation for loss of earnings, calculated with reference to such position, for the period from April 11, 1975, until his assignment to such position.

J. F. WEATHERHILL
ARBITRATOR