CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 736

Heard at Montreal, Wednesday, December 12,1979

Concerning

CANADIAN PARCEL DELIVERY (CANPAR)
DIVISION OF CANADIAN PACIFIC EXPRESS LTD.
and
BROTHERHOOD OF RAILWAY, AlRLINE AND STEAMSHIP CLERKS, FRElGHT HANDLERS,EXPRESS
AND STATION EMPLOYEES - SYSTEM BOARD OF ADJUSTMENT NO. 517

DISPUTE:

The issuing of fifteen demerits and subsequent dismissal of employee G. Heins, CANPAR, Toronto, Ontario.

JOINT STATEM?NT OF ISSUE:

Employee G. Heins was assessed fiiteen demerits for a motor vehicle accident which contributed to his having accumulated over sixty demerits.

The Brotherhood contends the fifteen demerits and subsequent dismissal were not warranted or justified and requested the demerits be rescinded and employee be reinstated and reimbursed all monies lost.

The Company contends the discipline was justified and declined the request.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) J. J. BOYCE GENERAL CHAIRMAN	(SGD.) D. R. SMITH DIRECTOR, INDUSTRIAL RELATIONS, PERSONNEL & ADMINISTRATION

There appeared on behalf of the Company:

D. R. Smith	-	Director Labour Relations & Administration,CP Exp.,Tor.
S. J. Samosinski	-	Labour Relations Officer, CP Rail, Montreal
B. D. Neill	-	Manager Labour Relations, CP EXpress, Toronto

And on behalf of the Brotherhood:

J. J. Boyce	-	General Chairman! B.R.A.C., Don Mills, Ontario
J. Crabb	-	Vice General ChaIrman, B.R.A.C., Toronto
F. W. McNeeley	-	General Secretary Treasurer, B.R.A.C., Toronto

AWARD OF THE ARBITRATOR

On April 27, 1979, it was discovered that one of the Company's vehicles had been damaged. Investigation revealed that the vehicle, a trailer, had last been moved by the grievor. The nature of the damage, the condition of the vehicle, the matching of the paint chips on the trailer and on the post which appeared to have been hit all served to indicate that the accident had occurred on April 26, when the grievor took the trailer to the centre, where, as it appears most probable, the accident occurred. From all of the material before me, I conclude that the grievor did accidentally cause damage to the trailer on the night in question.

The accident was not reported, and as a result, when it was discovered, it was considered that the grievor might be subject to discipline on two counts, first of having damaged the vehicle and second of having failed to report the accident. After the matter was investigated, however, the Company decided not to impose any discipline in respect of the failure to report the accident, since it was possible in the particular circumstances that the grievor did not realize the trailer had hit a pillar. Discipline was, however, assessed in respect of the accident itself.

As has already been set out, the accident did, as I find, occur and was the grievor's responsibility. Although the grievor indicated he did not feel responsible for the damage because "clearance is of a minimum", that very fact should have led to the taking of extra care, and the verification of the clearance when the equipment was backed in. The same door has been used by others on many occasions without incident.

The matter was investigated by an Accident Committee, which included Union representation. It was the unanimous view of the committee that the accident was preventable, and that it was a matter of "misjudging clearance and/or sideswipe". The Commlttee noted that the grievor was responsible for checking clearance and should have realized how much he needed. From the material before me, it would appear that that view of the matter was a correct one, and I so find. The grievor was, I find subject to discipline in respect of the accident.

As to the severity of the penalty imposed, while I think that given the circumstances as they were known the assessment of fifteen demerits was a substantial penalty, it is not clear that it was excessive. It was the penalty recommended by the Accident Committee. Even if it were to be reduced say, to one of ten demerits, the result would still be that the grievor had accumulated more than sixty demerits. The grievor's record was such that almost any occasion for discipline would lead to his discharge. He was discharged, it should be noted, not simply because of what seems to have been a relatively minor accident, but because of the accumulation of more than sixty demerits. The assessment of demerits on this last occasion was justified.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR