

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1141

Heard at Montreal, Wednesday, November 2nd, 1983

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

And

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

DISPUTE:

The assessing of fifteen demerits to employee P. Ermekeil, CANPAR, Montreal Quebec.

JOINT STATEMENT OF ISSUE:

Employee P. Ermekeil was assessed fifteen demerits for an accident he was involved in December 22, 1982.

The Brotherhood contested the discipline maintaining the incident was orchestrated by a second party and requested the 15 demerits be expunged from his record.

The Company denied the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
General Chairman, System Board of
Adjustment No. 517

FOR THE COMPANY:

(SGD.) D. R. SMITH
Director, Industrial
Relations,
Personnel and
Administration

There appeared on behalf of the Company:

D. R. Smith	- Director, Industrial Relations, Personnel & Administration, CP Express, Toronto
B. C. Neill	- Manager, Labour Relations, CP Express, Toronto
J. W. McColgan	- Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J. J. Boyce	- General Chairman, BRAC, Toronto
J. Crabb	- General Secretary-Treasurer, BRAC, Toronto

AWARD OF THE ARBITRATOR

This is a discharge grievance where the grievor Mr. P. Ermekiel, has challenged the propriety of the Company's decision to terminate his employment. At all material times the grievor (since he commenced

employment on June 29, 1981) was employed as Driver Representative.

On the afternoon of December 22, 1982, the grievor, while in the control and care of a Company truck, was involved in an accident. At that time he came into contact with a taxi cab causing damage to the rear bumper of the vehicle. The accident was preceded minutes before by an incident whereby the same taxi had cut in front of the grievor's vehicle in order to complete a left hand turn while the grievor was proceeding forward. At the time of the incident, the cab driver had parked his vehicle in a stationary position between two parked trucks thereby blocking the grievor's right of way. Both the grievor and the cab driver discussed "the near miss" that had just previously occurred. It suffices to say that "heated" words were exchanged.

Notwithstanding the grievor's requests that the cab driver move his vehicle, his right of way continued to be impeded. After approximately ten minutes (during the course of which the heated exchange continued) the grievor attempted to manoeuvre his truck in order to by-pass the taxi cab. In the process of doing so the grievor's vehicle came into contact as aforesaid with the taxi cab.

The incident was reviewed by the Accident Review Committee. The Accident Review Committee concluded that the accident was "preventable" and attributed its cause to the grievor's negligence. The Committee recommended that 15 demerit points be assessed against the grievor. The Union Nominee on the Committee recommended that five demerit points would have sufficed. The Company followed the recommendation of the majority of the Committee.

I do not propose to review the facts causing the accident for the purpose of determining responsibility. I am satisfied that nothing has been adduced in evidence that ought to persuade me to depart from the conclusion reached by the Committee that the accident was "preventable" and was caused by the grievor's failure to exercise a reasonable standard of care.

The issue in this case is whether, given the grievor's responsibility, he should have been assessed fifteen demerit points. And, of course, that particular question assumes greater significance in light of his past record. The grievor's record shows that since he commenced employment he has been involved (inclusive of the culminating incident described herein) in five preventable accidents for which he has been designated responsible. Prior to the culminating incident the grievor had accumulated 45 demerit points. The fifteen demerit points assessed by the Company for his last accident, accordingly, resulted in his termination.

The sole argument advanced by the trade union to convince me to mitigate the assessment of 15 demerit points (and thereby direct the grievor's reinstatement) pertained to the provocation of the cab driver that occurred immediately prior to the accident. In this regard, the Company conceded (and there is no dispute on this matter) that the grievor's encounter with the cab driver so affected his judgment in the operation of the Company's vehicle that it constituted a contributing factor in the cause of the accident. The issue placed before me was whether such provocation, in the

circumstnace described, ought to be sufficiently persuasive to convince me to vindicate the grievor as an otherwise professional driver.

The Company has asked me to find that the grievor both at the time of the culminating incident and having regard to his overall driving record has not exhibited the skills required of a reasonably professional truck driver. The frustrations experienced by the grievor in his encounter with the cab driver in this case are not so unusual a circumstance so as to cause me to obviate the penalty assessed and thereby trigger the grievor's reinstatement. The grievor in being responsible for five accidents over the eighteen month period he has worked for the Company has clearly exhibited his unsuitability for reinstatement to the position.

In having regard to the facts that precipitated the culminating incident and particularly the grievor's past record during his brief tenure as an employee, I am satisfied that the Company acted on reasonable and just grounds in terminating his employ. I am of the view that the provocation visited upon the grievor prior to the culminating incident may very well explain but does not excuse the grievor's poor judgment in precipitating the accident. Had the grievor's conduct in this case been the isolated aberration of an employee with long standing service with the Company then I might very well have been prepared to exercise my remedial discretion in his favour. But the grievor's abysmal accident record during his short tenure as an employee of the Company suggests that he is unable to meet the standard of care required of a professional truck driver. I am therefore reluctant to interfere with the Company's decision.

Accordingly, the grievance is denied.

DAVID H. KATES,
ARBITRATOR.