CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.1155

Heard at Montreal, Thursday, November 17, 1983
Concerning

CANADIAN PACIFIC EXPRESS & TRANSPORT LTD.
CP TRANSPORT (WESTERN DIVISION)

and

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

EX PARTE

DISPUTE:

Claim that fifteen demerits issued C. Lowrence excessive and should be removed from the record.

EMPLOYEES' STATEMENT OF ISSUE:

On the night of December 3rd, 1982, C. Lowrence was manoeuvering a tractor trailer unit in the Calgary Terminal.

Employee J. Smyke was walking across the Terminal Yard and there was a collision between the unit operated by C. Lowrence and Mr. Smyke.

Company awarded fifteen demerits to C. Lowrence "for failure to ensure operating area clear, resulting in injury to employee J. Smyke, on or about December 3, 1982, approximately 19:15 hours while operating Unit No. DC.678".

Union claim excessive.

Company deny claim.

FOR THE BROTHERHOOD:

(SGD.) R. WELCH
System General Chairman.

There appeared on behalf of the Company:
N. W. Fosbery - Director, Labour Relations, CPE, Toronto

And on behalf of the Brotherhood:

Matt Krystofiak - System General Chairman, BRAC, Calgary
G. A. Gilligan - Vice-General Chairman, BRAC, Montreal

AWARD OF THE ARBITRATOR

The grievor, Mr. C. Lowrence, was assessed fifteen demerit points for

his alleged negligence. While operating the employer's vehicle, he collided with a fellow employee, Mr. J. Smyke. The accident took place at the company's Calgary Terminal or yard at approximately 19:15 hours on December 3, 1982. The prevailing conditions at the yard were dark and wet. Mr. Smyke, at the time of the accident, was walking in the yard in the search of a tractor-trailer he was to drive to Kamloop B.C.. While walking Mr. Smyke passed on the right hand side of the grievor's vehicle which happened to be in a stationary position. As he continued his walk Mr. Smyke heard the roar of the motor of the grievor's vehicle. As he turned towards the vehicle he was struck down thereby injuring the right side of his body. Although Mr. Smyke's injuries were not serious (to the extent that he continued his tour of duty) the accident nonetheless could have been "prevented"had the grievor exercised a reasonable standard of care.

The employer insists that the immediate cause of the accident can be attributed to the grievor's failure to switch on the headlights of his vehicle. Mr. Lowrence suggests that his lights were on; Mr. Smyke insists that the lights were off. The grievor's supervisor, Chris Gagne, who attended the accident after it had occurred observed that "only the clearance lights were on, no headlights and the tractor was idling".

The trade union suggested that Mr. Smyke probably walked into the truck as a result of his lack of attentiveness while searching for the trailer he was to take to Kamloops. The trade union relied on this theory because Mr. Smyke was walking both to the right and parallel to the grievor's truck when the accident occurred. It therefore followed that his injuries to the right side of his body occurred as he "turned into" the truck. In response to the trade union's suggestion the employer merely stated that the grievor, indeed, might have turned, having regard to the roar of the engine, as the grievor's truck ran into him.

In any event, the trade union insisted that the employer had contributed directly to the accident, despite the trade union's past requests for improved lighting, by virtue of the company's refusal to take positive steps to enhance the poor lighting at the company's yard. Had such improvements been made there is no doubt, on the trade union's part, that the accident could have been avoided.

Based on the preponderance of the evidence that was placed before me I am satisfied that the cause of the accident was directly attributable to the grievor's failure, on a dark wet evening, to switch on the headlights of his vehicle while in the course of operation. Had the lights been turned on, the grievor most likely would have observed Mr. Smyke walking in the vicinity and thereby would have avoided the collision. In this regard, I have not been convinced that Mr. Smyke, a tractor-trailer operator of some experience, would have been so inattentive in his conduct that he would have walked directly into the grievor's "moving" vehicle.

Insofar as the trade union's allegation that the accident could have been avoided had the lighting in the company's yard been more effective, I have no particular comment. Had the headlights to the grievor's vehicle been turned on at the time of the accident, then,

the trade union's submission that the employer's shortcoming in failing to improve the lighting at the yard contributed to the accident would have had a more persuasive impact. Since I have been satisfied that the grievor's negligence, for the reasons I have stated, was the sole cause of the accident the nature of the lighting at the company's yard most likely had no direct bearing on the cause of the accident.

Accordingly, the employer's decision to impose 15 demerit points for the grievor's misconduct is sustained and the grievance is thereby rejected.

DAVID H. KATES,
ARBITRATOR.