

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1157

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

DISPUTE:

Claim that fifteen (15) demerits issued Mr. K. Binks account of a clearance incident on February 25th, 1983, is excessive and should be removed from his file.

JOINT STATEMENT OF FACT:

Mr. Binks was backing truck (DS154) to a loading dock with the help of a guide (Mr. Ronald E. Clifford).

Mr. Binks operated the truck as directed by the guide.

The guide (Mr. Clifford), directed Mr. Binks too far back which resulted in a mishap.

The Union requested demerits be removed.

The Company declined.

FOR THE BROTHERHOOD:

(SGD.) PAUL ROUILLARD  
FOR: R. Welch  
System General Chairman.

FOR THE COMPANY:

(SGD.) N. W. FOSBERY  
Director, Labour Relations

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

On February 25, 1983, the grievor, Mr. K. Binks, while operating a company vehicle, backed up the said vehicle at a customer's premises. While in the process of backing up the vehicle to accept a shipment

the vehicle struck an overhang causing damage in the amount of \$2,526.00. The grievor was assessed fifteen demerit points for his alleged negligence.

The evidence remained uncontradicted that the grievor relied upon the signals communicated to him by a bystander who purported to direct the grievor while in the process of reversing his vehicle. In guiding the grievor, the bystander has admitted that he may have misdirected the grievor thereby causing him to collide with the overhang.

The CP Transport Driver's Handbook encourages the company's drivers to take advantage of the services that might be offered by a guide in gaining vehicular access to difficult locations. Nonetheless, such reliance on guides is premised on the assumption that the driver has communicated with the guide, prior to any reliance on his advice, in order to determine the meaning of the hand signals that are to be used. In the circumstances of this case, the evidence has failed to establish that such consultation took place.

I am satisfied that the employer's submissions with respect to the grievor's negligence in his causing the damage must be accepted. That is to say, I am convinced that a driver, notwithstanding the best intentions of the guide who has volunteered his services, is ultimately responsible for any damage caused in the operation of his vehicle. The grievor simply must be deemed to accept the advice of such guides at his peril.

Nonetheless I am equally entitled, in assessing the propriety of the punishment that was imposed, to take into account, particularly in having regard to the encouragement contained in the Driver's Handbook with respect to the use of guides, the admitted negligence of the guide in contributing to the accident. For this reason, although I find the grievor to be negligent, I propose, owing to the contributory negligence of the guide, to reduce the penalty imposed for the grievor's misconduct from fifteen demerit points to seven and one-half.

The employer's action is adjusted accordingly.

DAVID H. KATES,  
ARBITRATOR.