

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1461

Heard at Montreal, Thursday, January 16, 1986

Concerning

CAN PAR
(DIVISION OF CP EXPRESS AND TRANSPORT LIMITED)

and

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

DISPUTE:

The assessing of sixty demerits to employee David Labadie,
Thamesville, Ontario.

JOINT STATEMENT OF ISSUE:

June 23, 1983, employee David Labadie was assessed sixty demerits for
allegedly withholding of Company funds for a delivery that was made
December 1982.

The Brotherhood grieved the demerits requesting they be expunged from
his record.

The Company denied the Union's request.

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

(SGD.) B. D. NEILL
Director, Human Resources
CP Trucks

There appeared on behalf of the Company:

B. D. Neill	- Director Human Resources, CP Trucks, Toronto
N. W. Fosbery	- Director Labour Relations, CPE&T, Toronto
B. Bennett	- Human Resources Officer, CANPAR, Toronto

And on behalf of the Brotherhood:

J. J. Boyce	- General Chairman[BRAC, Toronto
J. Crabb	- Vice-General Chairman, BRAC, Toronto
G. Moore	- Vice-General Chairman, BRAC, Moose Jaw
M. Gauthier	- Vice-General Chairman, BRAC, Montreal
J. Bechtel	- Vice-General Chairman, BRAC, Cambridge
M. Flynn	- Vice-General Chairman, BRAC, Vancouver

AWARD OF THE ARBITRATOR

Because of the factual similarities of both CROA Cases #1460 and #1461 I have consolidated them so that they may be decided together.

The uncontradicted evidence established that on two occasions the grievor failed "to settle" a C.O.D. account with the employer so payment might be made to the customer. In the one instance on April 7, 1983 the grievor failed to process a cheque in the amount of \$280.00 collected from the addressee. In the second instance, on December 15, 1982 the grievor did not return \$30.68 in cash collected from the addressee for dispatch to the customer. The grievor was assessed 30 demerit marks and 60 demerit marks respectively for each incident. The grievor as a result was discharged.

It is important to stress that the company is not charging the grievor with any attempt to steal or defraud the customer of any monies.

The grievor has been employed as a driver representative since March 15, 1978. His record indicates that he has been disciplined on a previous occasion for breach of the company's rule prohibiting the withholding of company funds. At the time of the first incident wherein the grievor was assessed 30 demerit marks he had accumulated 15 demerit marks. Rule 10 (c) provides:

"The following rules, if violated, could be considered cause for dismissal:

(c) Wilful damage, theft, withholding company funds, failure to settle funds as instructed or failure to make daily settlements upon completion of the day's work."

There is no question that the grievor's infractions were serious and warranted a severe disciplinary response. The settling of accounts on C.O.D. deliveries is an essential function of the driver's duties and any shortcoming in that regard would reflect poorly on the company's reputation and thereby adversely affect its ability to attract business.

The grievor could provide no excuse for his shortcoming. Moreover, he could not account for the missing funds.

The only explanation that was advanced (and which I accept as plausible) is that the grievor has a serious mental health problem. He is prescribed various types of medication to deal with this problem. The medication causes confusion, dizziness and blackouts. The grievor is clearly not a well man.

The medical prognosis contained in Dr. J. K. McNeil's report did not indicate that the grievor has overcome, or was about to overcome his medical problem. It appears that the grievor is still under medical care and requires continued medication.

In short, there appears to be a plausible explanation for the grievor's unorthodox behavior and his unreliability in discharging the duties and responsibilities of his position.

Unfortunately, the company cannot be placed in a position where it should have to absorb the effects of the grievor's difficulty.

The employer has shown just cause for terminating the grievor. And, moreover, the grievor has not satisfied the onus of proof of demonstrating that the cause for his difficulties in coping with his duties has been resolved.

Accordingly, the grievance must be denied.

DAVID H. KATES,
ARBITRATOR.