CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1463

Heard at Montreal, Thursday, January 16, 1986

Concerning

CAN PAR
(DIVISION OF CP EXPRESS AND TRANSPORT)

and

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

EX PARTE

DISPUTE:

The dismissal of employee F. Lemire, Can Par, Montreal, Quebec.

BROTHERHOOD'S STATEMENT OF ISSUE:

December 12, 1985, employee F. Lemire, was advised his services were no longer required by the Company.

On the same day (December 12, 1984), he was given his release paper which stated he had quit. Employee F. Lemire denies he quit and exercised his rights under Article #6 of the Can Par Agreement.

The Brotherhood requested he be reinstated with full seniority and reimbursed all monies lost while suspended.

The Company denied the Union's request.

FOR THE BROTHERHOOD:

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

The issue raised in this case is whether the grievor, Mr. F. Lemire, quit the company's employ.

As stated at the hearing there are two components that must be established in order to satisfy an Arbitrator of a valid quit. It must be shown that the grievor expressed a subjective intention to quit the company's employ and that objective evidence thereafter is consistent with or confirmatory of the employee's intention to abandon the company's employ.

The purpose of the arbitral jurisprudence in requiring proof of both elements is for the purpose of ensuring that a momentary act of frustration or temper not be misconstrued as a real quit. In other words, in the heat of the moment an employee, without meaning it, may abandon years of investment in the service of his employer over an isolated fit of irrational behavior.

Should the Arbitrator be satisfied that the employee has not quit then the company may then adduce evidence to establish, in any event, it had just cause to discharge the employee. In other words, the company's failure to reinstate the grievor upon his request is viewed at arbitration as a constructive dismissal. And, the case, for practical purposes, is treated as an ordinary discharge matter.

The one restriction in dealing with a case in the circumstances where a purported quit has been converted into a disciplinary issue is that the company is obliged under Article 6.1 of the collective agreement to hold a fair and impartial investigation before it may have recourse to discipline. Accordingly, where the company, as a result of an Arbitrator's decision,has been lulled by the employee's actions into perceiving a legitimate intention to quit its employ, a fair and appropriate direction would be to order the company, without prejudice to any loss occasioned by the grievor's being held out of service, to comply with the requirements of the collective agreement with respect to holding a fair and impartial investigation into the alleged "cause" for the employee's constructive dismissal.
In the particular circumstances of this case I am satisfied that owing to the grievor's frustration with respect to his not being confirmed a regular or permanent employee he expressed to his supervisor, Mr. J. Salmon, a subjective intention to quit the company's employ. Hrs irrational behavior was exhibited prior to the incident of December 12, 1984, when he absented himself without excuse for three consecutive work days. The employer, to its credit, was prepared to give the grievor a fresh start despite the inconvenience and dislocation that resulted from his unauthorized absence. Shortly after the grievor was given the benefit of another chance he then changed his mind and told his supervisor that he was still "fed up" and wanted "to quit".

I accept this to be an accurate representation of what occurred and reject any suggestion made by the trade union to the contrary In other words, I am not satisfied of any language difficulty whereby the grievor's supervisor misunderstood Mr. Lemire's words to mean he intended to quit for the day. In this regard, the conversations

between the two persons at all times took place in the English language. Any attempt to suggest that the words "Je quitte" were used to mean"I'm leaving for the day" is simply unfortunate. In short I am satisfied that Mr. Lemire made a statement to Mr. Salmon evidencing a subjective intention to resign.

However, the grievor's immediate attempt thereafter to secure reinstatement was not denied by the company. Presumably, when the grievor had the opportunity to consider his actions and appreciated the consequences of his quitting the company's employ he sought to have his decision reversed. In the interim period the company was in the proces of taking the necessary measures to effect the grievor's separation. At this juncture, it can hardly be said that there existed subsequent objective evidence confirming the grievor's initial intention to resign. As a result I have not been satisfied on the evidence adduced of a valid quit.

Accordingly, when the employer rejected the grievor's overtures for reinstatement I am satisfied he was at that moment constructively dismissed. It seems to me the culminating incident would appear to be the grievor's alleged failure to report for work on December 12, 1984 as authorized by his supervisor upon his being given another chance.

Whether the employer had cause to discharge the grievor for this incident and in light of his past record is at this point premature. I defer making any comment in that regard. For present purposes, I am satisfied that the company ought to be given the opportunity to comply with the requirements of the collective agreement, without prejudice, by its holding a fair and impartial hearing into the grievor's alleged misconduct. In the interim period the grievor's discharge is to be removed and he is to be reinstated as an employee. The grievor, however, will be deemed to have been properly held out of service without pay or other benefits for the period between his alleged constructive dismissal and the completion of the interview process. I shall remain seized for the purpose of implementing this decision.

DAVID H. KATES,
ARBITRATOR.