

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1469

Heard at Montreal, Tuesday, February 11, 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

EX PARTE

DISPUTE:

The assessing of twenty demerits to employee R. Piper, Canadian Parcel Delivery, Tilbury, Ontario.

BROTHERHOOD'S STATEMENT OF ISSUE:

June 21, 1985, employee R. Piper was assessed twenty demerits for failure to report a vehicle accident June 12, 1985, which resulted in his dismissal.

The Brotherhood grieved the demerits and requested he be reinstated with full seniority and reimbursed all monies lost while held out on suspension plus any other monetary lost including benefit plans (etc.).

The Company declined 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
D. Bennett	- Human Resources Officer, CANPAR, Toronto

And on behalf of the Brotherhood:

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
J. Marien	- System Board 14, Observer

AWARD OF THE ARBITRATOR

On agreement of the parties the grievances presented on the grievor's behalf with respect to his alleged responsibility for the accident on June 12, 1985 and his consequent failure to report the accident's occurrence to his superiors are to be treated as one incident where the grievor was assessed twenty-five demerit marks.

Despite the trade union's challenge that was made with respect to the accuracy of the grievor's cumulative total of demerit marks, I am satisfied, as of the culminating incident, the company had properly assessed the grievor with 45 demerit marks.

Moreover, I am also satisfied that the grievor was correctly determined by the Accident Committee to have caused the accident in question as a result of his own admission that he had reversed his vehicle against the flow of vehicular traffic on a busy thoroughfare. The trade union did not seriously challenge the notion that such vehicular practice is against "the custom of the trade" unless absolutely necessary. In this regard, the grievor's own admission that he reversed his vehicle to enable another driver to secure access to a parking space indicated that the requirement to reverse was not absolutely necessary. Accordingly, I simply reject the trade union's argument that no accident occurred for which the grievor could have been held accountable.

The more serious concern that was expressed by the company pertained to the grievor's failure to report the incident. The trade union provided a number of explanations as to why the accident did not warrant the grievor's adherence to his responsibility to report.

Firstly, it was argued that the accident involved the "kissing" of two bumpers causing minimal property damage. If an employee were required to report such accidents, it was argued, because of their frequency, that he would constantly be filling out accident reports.

My response to that argument is simply that the severity of the accident on the quantum of property damage is of no relevance to the employee's obligation to report. Issues arising out of vehicular accidents relating to the pinpointing fault, the assessment of damages and the legitimacy of third party claims are quite clearly the responsibility of the company. The first obligation of the employee when he is involved in an incident is clearly the making of a written report so as to enable his superiors to investigate and to make an informed decision as to the consequences. In my view it is not the employee's prerogative to make any such judgement with respect to any of these matters.

Secondly, I am satisfied, based on the material presented, that the grievor was aware that the incident represented a serious accident and knowingly attempted to settle the consequences with the other participant without the company's intervention. In other words, owing to his serious disciplinary record, the grievor deliberately tried to cover up "the incident". And in so doing, in my opinion, committed a serious error of judgment.

The irony of this entire case suggests that had the grievor done what he was obliged to do, he might very well have avoided the discharge penalty. In other words, had he solely been assessed demerit marks

for his responsibility for the accident his cumulative demerit marks may still have fallen short of sixty.

However, in reviewing the grievor's actions in their totality, I am satisfied that, although his act in failing to report was deliberate, it constituted a serious error of judgment that should not warrant his termination. I am of the view that a long term suspension might serve as a deterrent to others who may be inclined to engage in like misconduct as well as serving the corrective purpose of rehabilitating an employee who might yet make a meaningful contribution to the company.

Accordingly, the grievor is to be reinstated forthwith to the position he held at the time of his discharge. The period between June 21, 1985 and his reinstatement is to be shown on his record as a suspension without pay or other benefits.

I shall remain seized for purposes of implementation.

DAVID H. KATES
ARBITRATOR.