

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1470

Heard at Montreal, Tuesday, February 11, 1986

Concerning

EXPRESS AIRBORNE  
(DIVISION OF CP EXPRESS AND TRANSPORT LIMITED)

and

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

DISPUTE:

Concerns the grievance for the assessment of thirty demerits and dismissal of Mr. T. Helmig, Edmonton, Alberta, and claim for reinstatement with full wages and interest on same since July 12, 1985.

JOINT STATEMENT OF ISSUE:

July 8, 1985, Mr. T. Helmig was instructed in writing to attend an investigation concerning his alleged neglect to not lock his vehicle July 8, 1985, while making a delivery to A. V. Carlson, the Questions and Answers was taken July 10, 1985, T. Helmig was issued thirty demerits for alleged "failure to ensure the Company property is properly secured" and "failure to leave vehicle in locked condition", July 10, 1985, he was suspended, July 12, 1985, his services with the Company were terminated.

The Union's position is that the thirty demerits issued were unwarranted as this employee stated time and time again in the investigation that he "always locks vehicle", "sets the parking brake" "shuts the motor off".

The Company's position is during the investigation Mr. T. Helmig does not state that his vehicle was locked and that the demerits will not be removed.

The relief requested is for reinstatement of T. Helmig with full wages and interest rates and all benefits from July 12, 1985.

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

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

The grievor, Mr. Troy Helmig, is a relatively short service employee who, as of the date of the culminating incident, had accumulated 45 demerit marks.

On July 8, 1985, Branch Manager G. Manchuck observed that the vehicle the grievor operated was left unlocked and the window open while he was making a delivery. He was assessed 30 demerit marks for his alleged failure to ensure the company's property was properly secured and in a locked condition. As a result the grievor was terminated from his position as "a Courier".

The grievor has denied that he left his vehicle in the unsecured circumstance as alleged by the company. During his "Q&A" he responded to the company's allegation on several occasions in a rehearsed, mechanical way communicating the notion that he always locked his vehicle in the appropriate manner.

The trade union's theory is that Mr. Manchuck was purposely following the grievor on the day in question so as "to set him up" for discharge. It is charged that Mr. Manchuck, through past disciplinary incidents, purposely and deliberately sought to secure the grievor's discharge. Indeed, it was alleged that the several incidents that constituted the grievor's disciplinary record were an integral part of Mr. Manchuck's strategy. That is to say, the grievor was disciplined for incidents of misconduct that would otherwise have been condoned if committed by another employee.

In resolving the credibility issue herein I am compelled to conclude that the grievor's failure to respond in a natural, spontaneous manner to the charges put to him must be seen to operate to his prejudice. Surely, the rehearsed and mechanical responses that were made must be seen as an attempt on his part to conceal the truth of what had actually occurred. In this regard, I have preferred the first hand observations made by Mr. Manchuck to the grievor's evidence.

Insofar as "the set up theory" advanced by the trade union is concerned, my sole response is that if "discriminatory" treatment is being alleged with respect to the grievor's past disciplinary record it was both the grievor's and/or the trade union's duty to grieve those matters contemporaneously with the employer's imposition of discipline. It does not lie in the grievor's mouth to make such serious accusations at the time of the culminating incident where he had it within his power to challenge the alleged mal fides actions of

his employer. In the absence of having recourse to the grievance procedure in the appropriate manner I am compelled to draw the inference that no such discrimination occurred. Or, if it did occur then the grievor failed to take such corrective action at his peril.

In sum, in light of the grievor's abysmal record over his short term service as an employee of the company I can find no justification for disturbing the discharge penalty that was imposed.

The grievance is accordingly denied.

DAVID H. KATES,  
ARBITRATOR.