

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.1482

Heard at Montreal, Tuesday, March 11, 1986

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
BOARD OF ADJUSTMENT #14

DISPUTE:

Warning affixed to Mr. Y. Cartier's disciplinary record, due to an injury.

JOINT STATEMENT OF ISSUE:

On April 15, 1985, employee Y. Cartier was summoned to a disciplinary investigation to clarify the facts on an accident sustained at work on March 25, 1985. Following the investigation a warning was affixed to employee's disciplinary record.

The Brotherhood maintains that the disciplinary measure is unjustified and claims the withdrawal of the "warning" affixed to the employee's record since the injury was the first lost-time injury suffered by Mr. Cartier since he entered the Company's service, December 15, 1976, the Company's equipment was defective and no member of the Health and Safety Committee was permitted to be present at the investigation.

The Company denied the grievance.

FOR THE BROTHERHOOD:

(SGD.) P. VERMETTE
FOR: General Chairman
BRAC Board of Adjustment #14

FOR THE COMPANY:

(SGD.) R. L. BENNER
Director Materlals

There appeared on behalf of the Company:

P. P. Macarone	- Supervisor of Training and Accident Prevention, CPR, Montreal
A. Bourassa	- General Stores Supervisor, CPR, Montreal
R. Brunet	- Production Coordinator, CPR, Montreal
P. E. Timpson	- Labour Relations Officer, CPR, Montreal
D. J. David	- Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

J. Marien	- Acting Vice.General Chairman, BRAC, Montreal
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D. J. Bujold - Vice-General Chairman, BRAC, Toronto
C. Pinard - Local Chairman, Lodge 1267, BRAC, Montreal
J. Germain - Lodge 1221, BRAC, Montreal

AWARD OF THE ARBITRATOR

The grievor, Mr. Y. Cartier, incurred a serious injury during the course of his shift on March 25, 1985, when he fell into a 10" gap between the back of the trailer he was loading and the loading dock. As a result he was absent on injury leave for a period of 9 days.

The company characterized the accident as "preventable" inasmuch as the grievor could have secured a ramp to assist him in his loading functions. For his dereliction of duty the grievor was assessed a written warning that was placed on his personal record.

The trade union argued that the discipline should be vitiated because no member of the Health and Safety Committee was invited to attend the disciplinary investigation.

Secondly, it was argued that the discipline exacted was discriminatory in light of the company's practice of overlooking the imposition of discipline with respect to such infractions.

With respect to the complaint that Health and Safety Committee representation was absent from the disciplinary investigation it is significant to note that the trade union upon notification of the interview could have arranged for such representation. That is to say, the trade union is as equally at fault as the employer for that alleged shortcoming. In any event, I am not satisfied that the purpose of the Health and Safety Committee is for the purposes of reviewing disciplinary causes related to an accident. Its function, of course, is to review the alleged cause of an accident and to recommend measures to prevent a recurrence.

The company was obviously facing a serious problem with respect to lost time due to accidents. It appears that the imposition of discipline, where warranted, has served the function of quelling the rise of such "preventable" accidents. Accordingly, the fact that the company is no longer prepared to overlook such derilections as in the past has had its obvious curative impact.

Given the lack of any explanation that might explain the grievor's behavior at the time of the accident I cannot hold that a written warning is an unjustified disciplinary response.

The grievance is denied.

DAVID H. KATES,
ARBITRATOR.