CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1877

Heard at Montreal, Thursday, 12 January 1989

Concerning

CANADIAN PARCEL DELIVERY
(CP EXPRESS & TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The assessment of 10 demerits and dismissal of CanPar employee B. Murray, Prescott, Ontario.

UNION'S STATEMENT OF ISSUE:

This employee was assessed 10 demerits for improper handling of a pick-up package, and dismissed for accumulation of demerits.

It is the Union's contention this employee has been treated harshly and in a discriminatory manner by the Company, as other employees have not been disciplined for improperly handling shipments

The Union requested the 10 demerits be removed and the employee be reinstated with full seniority and benefits, and wages lost.

The Company declined the Union's request stating "... it even left Mr. Murray speechless ..." when in fact Mr. Murray was exercising his rights afforded him by the Collective Agreement, Article 6.2.

FOR THE UNION:

(SGD) J. J. BOYCE
General Chairman
System Board of Adjustment 517

There appeared on behalf of the Company:

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| D. D. Francis | - Counsel, Toronto |
| F. McMullen | - Director, Labour Relations |
| R. Musch | - Regional Director, Toronto |
| G. Code | - Supervisor, Prescott |

And on behalf of the Union:

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| D. Wray | - Counsel, Toronto |

J. J. Boyce - General Chairman, Toronto
M. Gauthier - Vice-General Chairman, Toronto
J. McCaw - Witness
M. Baynham - Witness
B. Murray - Grievor

AWARD OF THE ARBITRATOR

The parties agreed that the four grievances filed by Mr. Murray (CROA 1874, 1875, 1876 and 1877) should be heard and disposed of concurrently. Having regard to the totality of the material, the Arbitrator finds that a number of the allegations against Mr. Murray are not made out. The only allegations which are established in sufficient substance for the assessment of discipline are the grievor's failure to properly handle a package which he picked up from one customer and left behind in the premises of another, (CROA 1877) and his failure to properly complete delivery records, notwithstanding specific instructions from his supervisor, on September 29, 1988 (CROA 1876).

The bulk of the demerits assessed against Mr. Murray relate to his alleged failure to complete deliveries, including priority freight, destined for his delivery area. The preponderance of the evidence, however, is that other employees who have found it impossible to deliver all of their parcels, in circumstances similar to the grievor's, have not been disciplined. Absent any compelling evidence with respect to the grievor's overall performance and productivity as compared with those of other employees, the Arbitrator is not persuaded by the Company's general assertion that their preferential treatment of the other employees is justified by the length of their service. The material therefore discloses a degree of discriminatory treatment of the grievor.

The Arbitrator has two further concerns with respect to the facts revealed in this case. The Company utilizes the Brown System of demerits as the basis of discipline. That system allows employees to be given verbal or written reprimands for initial minor infractions, followed by the assessment of demerits, on an increasing scale, for subsequent incidents. This allows the Company the ability to communicate, in a progressive way, to the employee the need to improve his or her performance, without the disruption both to the Company and the employee that would be occasioned by the imposition of periods of suspension. It also allows the employer, at any given point, to fine tune the measure of discipline so that it corresponds fairly to the gravity of the employee's behaviour, having due regard to past incidents.

As a general matter, therefore, it is incumbent upon members of management administering discipline under the Brown System to do so judiciously, progressively and with an overall view to correcting the employee rather than merely punishing. It follows that in dealing with a relatively junior employee who has committed minor errors or infractions, it is expected that the earliest assessment of disciplinary points will be at the lower end of the scale, in the

range of five or ten demerits. It may, of course, be appropriate for the employer to assess a higher degree of discipline, regardless of an employee's prior record, in instances of extremely serious misconduct.

The instant case raises substantial doubt about the application of these general standards to the grievor by the Company's local management. The grievor was assessed fifteen demerits on four separate occasions between March and September of 1988. Each of these was in relation to a relatively petty incident. Considering that fifteen demerits moves an employee one quarter of the way to a dismissable position, it is not surprising that Mr. Murray progressed from being a new-hire to discharge within the space of twenty-four months. That revelation, coupled with the undisputed fact that other employees were assessed no disciplinary penalty in circumstances markedly similar to Mr. Murray's, raises serious questions with respect to the credibility of the Company's disciplinary system in this case.

To the foregoing comments one further observation should be added. The accelerated application of discipline revealed in the circumstances of Mr. Murray raises a natural concern that management's perspective of the process of discipline, and its relation to arbitration, is in need of re-examination. Cases such as the instant case are susceptible of leaving the impression that, whether consciously or otherwise, the employer's officers tend to apply a deliberately heavy hand in the assessment of discipline in the belief that at worst, when the grievor is discharged, the Arbitrator will order his or her reinstatement without the payment of monetary compensation. This view would be prompted by the belief that in the end the Company would benefit insofar as the grievor, who would be left out of work for a period of some months, and sometimes for a period in excess of a year, would be taught a serious lesson when he or she returned to work, presumably at no cost to the Company. What that view fails to appreciate, however, is the unfair burden upon the employee who may be held out of work wrongfully, an ongoing victim of the time lapse that is inevitable in any grievance and arbitration procedure. A system of discipline that countenances or encourages that result, and its obvious financial hardship on an employee, risks courting cynicism and disrespect.

A fundamental premise of the notion of just cause is that an employee who has been wrongfully disciplined is entitled to be made whole. A corollary of that proposition is that members of management who make decisions with respect to the scale of discipline to be applied in particular cases must shoulder the responsibility to choose a degree of discipline that is fair and defensible in the circumstances. A failure to do so may have serious adverse consequences, not only in economic terms as a result of arbitral awards of compensation, but in terms of the overall credibility of the administration of discipline within the workplace.

In the instant case it is clear to the Arbitrator that the grievor should not have been discharged, and that that should have been appreciated by the Company. The repeated imposition of substantial numbers of demerits for petty infractions was not justified. The material discloses that on one occasion the grievor did fail to

exercise a sufficient degree of care in the custody of a customer's parcel, and that on another occasion he failed to follow explicit instructions given to him by his supervisor. In the circumstances I deem it appropriate that he be reinstated, with full compensation for all wages and benefits lost, and without loss of seniority, with his disciplinary record to stand at fifteen demerits. I retain jurisdiction in the event of any ensuing difficulty respecting the interpretation or implementation of this award.

January 13, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR