

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1878

Heard at Montreal, Thursday, 12 January 1989

Concerning

CANADIAN PARCEL DELIVERY  
(CP EXPRESS & TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The assessment of 15 demerits and dismissal of employee J. Gauthier, CanPar, Toronto, Ontario.

UNION'S STATEMENT OF ISSUE:

On June 20, 1988, the employee was assessed 15 demerits for alleged horseplay, and dismissed due to the accumulation of 74 demerits.

The employee, while on his break and waiting for the regular safety meeting to begin, was in the cafeteria showing another employee how to use the broom.

The Company classified the manner in which the employee was demonstrating the use of the broom as horseplay, running in the warehouse.

The Union contends the employee was not running in the warehouse, and the demonstration was taking place in the cafeteria on the employee's break.

The Union requested the removal of the 15 demerits and the employee be reinstated with full seniority and benefits and paid for all time lost.

The Company denied the Union's request.

FOR THE UNION:

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

There appeared on behalf of the Company:

D. D. Francis - Counsel, Toronto

F. McMullen - Director, Labour Relations  
A. Costa - Supervisor, Toronto

And on behalf of the Union:

D. Wray - Counsel, Toronto  
J.J. Boyce - General Chairman, Toronto  
M. Gauthier - Vice-General Chairman, Toronto  
J. Gauthier - Grievor

#### AWARD OF THE ARBITRATOR

The record reveals that the grievor has been a good and productive employee in the service of the Company for some five years. Regrettably, during an eighteen month period his disciplinary record rose to an uncharacteristically high level, standing at fifty-nine demerits effective March 31, 1988. It is not disputed that on June 3, 1988 Mr. Gauthier engaged in horseplay with another employee in the cafeteria of the terminal, contrary to Company rules. That incident was treated as a culminating incident and the grievor was assessed fifteen demerits and discharged.

The Company plainly had reason to discipline the grievor in the circumstances disclosed. By the same token, the severance of the employment relationship of an individual of five years' service, whose disciplinary record was almost clear a year previous, gives the Arbitrator pause to consider whether it is appropriate to substitute a lesser penalty in the circumstances. Mr. Gauthier is thirty-two years of age, is married and expecting his first child. At the hearing he spoke candidly, not attempting to conceal that he had been in error, and indicating that he appreciates the importance of conducting himself as a responsible employee in the future. On balance, and having particular regard to the minor nature of the culminating incident and the overall good quality of the grievor's work performance, the Arbitrator is inclined to substitute a period of suspension for Mr. Gauthier's discharge, and give him a second chance. The grievor must appreciate, however, that his disciplinary standing is extremely precarious, and that any future conduct that might attract discipline may not merit a similar result.

For the foregoing reasons the grievor shall be reinstated into his employment, without compensation or benefits, and without loss of seniority, his disciplinary record to stand at fifty-nine demerits, as before. The Arbitrator remains seized.

13 January 1989

(Sgd.) MICHEL G. PICHER  
ARBITRATOR