

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1879

Heard at Montreal, Thursday, 12 January 1989

Concerning

CANADIAN PARCEL DELIVERY
(CP EXPRESS & TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The assessment of demerits and dismissal of CanPar employee D. Tardiff, Montreal, Quebec, for accumulation of demerits.

UNION'S STATEMENT OF ISSUE:

Mr. Tardif was assessed 20 demerits for allegedly leaving the window in his truck open. The day in question was very hot and humid and the vehicle was otherwise secure. Other employees leave their vehicles unsecured and are not disciplined.

Mr. Tardif was assessed 10 demerits for allegedly failing to advise the Company that he would not be in to work on August 11 and August 12,. The grievor had advised Supervisor D. Racicot on August 10th that he was ill and that he would call when he could return.

Mr. Tardif was assessed 10 demerits for allegedly failing to pick up parcels at a customer. The grievor denies that any harm was caused to the customer and in any event the discipline was assessed after the 14 days and is therefore null and void.

Mr. Tardif was dismissed for accumulation of demerits.

In all cases, the Union submits the discipline was without merit or excessive and that the dismissal was unjust. The grievor requests reinstatement with full compensation and the removal of the demerits from his record.

The Company has denied the grievances.

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
D. Racicot	- Supervisor, Montreal
A. Lecuyer	- Supervisor, Montreal

And on behalf of the Union:

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

AWARD OF THE ARBITRATOR

The first incident for which the grievor was assessed demerits concerns his alleged failure to pick up parcels from a customer. The evidence reveals that when he arrived at the customer's location on July 13, 1988 he signed two bills of lading for a total of thirty parcels. Thirty parcels were positioned off to one side in the customer's premises and the grievor, having counted them, concluded that they were the ones to pick up. He was correct in that. Unbeknownst to him, however, there was a third bill of lading and three further parcels which were in another part of the premises. These he missed. In the Arbitrator's view the facts reveal an understandable human error, but no wrongdoing on the part of the grievor. It must therefore be concluded that the imposition of ten demerits was not justified in the circumstances.

The grievor was assessed a further ten demerits for his alleged failure to call in prior to the commencement of his shifts on August 11 and 12, 1988. It is not disputed that the grievor was ill, and that he called in sick to the dispatcher's office on August 10. It is at this point that the parties' recollection of the facts differs. The grievor maintains that the dispatcher put Supervisor Daniel Racicot on the line. He states that he told Mr. Racicot that he was ill and would not be in for work, adding that he would call the office in advance to let them know when he would be returning. It is common ground that when Mr. Racicot suggested that he could get the grievor's own supervisor, Mr. Alain Lecuyer, to the phone, the grievor advised him that that was not necessary, and that he need only pass the message on to him.

Mr. Racicot states that he was simply told by the grievor that he would not be in to work on that day because he was suffering from a stomach problem. According to his recollection, the grievor did not give any indication as to when he would return, and did not state that he would call in to let the Company know.

In this, as in any disciplinary matter, the burden of proof is upon the Company. While Mr. Racicot appeared to the Arbitrator to be a fair and candid witness, by his own account he made no notation of the information relayed to him by the grievor, since he simply passed

it on to Mr. Lecuyer verbally. By the account of either witness the call could have lasted no more than a minute, presumably at a time when Mr. Racicot had other concerns to occupy him. It appears to the Arbitrator that, on balance, the conversation had greater significance to the grievor, and, absent any written record taken by Mr. Racicot, Mr. Tardif's recollection of what was said is to be preferred. The Arbitrator is therefore constrained to conclude that the Company has not established a failure on the part of Mr. Tardif to adequately advise his supervisors as to the likelihood of his attendance at work on the dates in question. For these reasons this aspect of the grievance must be allowed.

The final incident in dispute concerns the grievor's failure to have secured his truck during the course of a delivery on August 4, 1988. He was assessed twenty demerits for leaving the window of his truck open while he and a security guard travelling with him were away from the vehicle making a delivery. The grievor does not deny the allegation, although there is some discrepancy between his own recollection and that of Mr. Lecuyer with respect to whether the window was fully open or only partially cracked. In the Arbitrator's view that is not material, as the Company rules are clear that vehicles are to be secured at all times during delivery, a requirement of which the grievor was aware.

The Union pleads a number of factors in mitigation. The vehicle in question was a five-ton truck with no access from the cab of the vehicle to its cargo box. It is common ground that the rear door of the cargo section was secured at all times so that the parcels being carried by Mr. Tardif were not, in that sense, in jeopardy. It is also not disputed that it was extremely hot on the day in question. Mr. Tardif states that he left the cab window partially open because the guard who was working with him, a person of senior years, was seriously affected by the accumulated heat in the cab.

In the Arbitrator's view there can be no dispute that in leaving the window open the grievor violated a Company rule and was subject to some measure of discipline for doing so. The sole issue becomes the degree of penalty appropriate. The grievor is not a long service employee, having commenced work on March 6, 1987. At the time of the incident his record stood at an unenviable forty-five demerits. In all of the circumstances he should have been aware that a violation of Company rules could attract serious consequences. In the circumstances, however, I am satisfied, having regard to the mitigating factors reviewed, that a substantial period of suspension in lieu of discharge is appropriate.

The grievor shall therefore be reinstated into his employment, without compensation or benefits and without loss of seniority, with his disciplinary record to stand at fifty demerits. I retain jurisdiction in the event of any dispute between the parties with respect to the interpretation or implementation of this award.

January 13, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR