

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1892

Heard at Montreal, Tuesday, 14 March 1989

Concerning

CP EXPRESS & TRANSPORT

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The assessment of 10 demerits and dismissal of CP Express and Transport employee T. LeBlanc, Moncton, New Brunswick.

JOINT STATEMENT OF ISSUE:

On September 2, 1988, the Company held an investigative interview, charging the employee with "Not Recording Exception."

On September 7, 1988, the Company issued Form X-195 to the employee, which advises 10 demerits for "Improper Checking."

On September 7, 1988, the employee was advised, due to the accumulation of 69 demerits, his services were being terminated.

The Union, during grievance procedures, argued the employee was disciplined for something other than the charges for which the investigative interview was held, and that the charges for which Form X-195 stated had not been sustained, and requested the 10 demerits be removed and the employee be reinstated with full seniority, and benefits, and he be paid for all time lost while held out of service.

The Company declined the Union's request.

FOR THE UNION:

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

FOR THE COMPANY:

(SGD) B. F. WEINERT  
Manager, Labour Relations

There appeared on behalf of the Company:

M. D. Failes	- Counsel, Toronto
B. F. Weinert	- Manager, Labour Relations, Toronto
T. Fielding	- Terminal Manager, Moncton

And on behalf of the Union:

L. Chaley	- Counsel, Toronto
J. J. Boyce	- General Chairman, Toronto

M. Gauthier           - Vice-General Chairman, Montreal  
T. Leblanc            - Grievor

#### AWARD OF THE ARBITRATOR

The Arbitrator is satisfied on the basis of the material and the evidence that the grievor, Mr. T. Leblanc, failed to follow correct documenting procedures by not recording an exception on the form provided for that specific purpose. It is common ground that the control copy of the bill for a shipment of toys which he was responsible for unloading indicated that there were ninety-five cartons to be shipped. In fact the cartons, stacked on three skids, numbered one hundred and ninety-five. While Mr. Leblanc noticed the discrepancy, he did not conduct a precise count, but rather assumed that the numbers written on the skids, which totalled one hundred and ninety-five, reflected the correct number of cartons. However, rather than make the necessary notation on an exception report, as required in the circumstances, he merely inserted the number one next to the number ninety-five on the control bill, to indicate one hundred and ninety-five.

It is clear that his action left the Company vulnerable, to the extent that in the event of any claim by the shipper or the consignee with respect to a shortage of material delivered, the Company would be without an accurate record of what was in fact delivered.

During the course of the disciplinary interview, conducted on September 2, 1988, when asked if he was aware of the exception form procedure, and why he had not followed it, he responded "You got me there, I don't know why." At the hearing, apparently for the first time, Mr. Leblanc advanced another explanation of what transpired. He submits that during the course of his shift, on August 22, 1988 when the incident occurred, he brought it to the attention of his foreman, Mr. Colin Steeves, who told him not to do anything more, and that he would take care of it. Mr. Leblanc further relates that he believes that he gave this explanation to Terminal Manager T. Fielding at the time of the disciplinary interview. Mr. Fielding denies having heard any such explanation before the date of the hearing.

On this aspect of the evidence the Arbitrator has substantial difficulty with the explanation of Mr. Leblanc. Authorization by his foreman would, from the outset, have been an arguably complete defense to the charge made against him by the Company. It is difficult to believe that a comment to that effect would not have been noted, both mentally and in a written form, by the Company officer conducting the disciplinary interview. In the instant case the record of the interview made by Mr. Fielding, and reviewed at the time with Mr. Leblanc, contains no mention of approval of his action on the part of Mr. Steeves. Moreover, the evidence of Mr. Fielding, which the Arbitrator accepts as candid, is that he had never heard any suggestion of Mr. Steeves' approval before the arbitration hearing, and that in fact when he spoke to Foreman Steeves about the incident shortly after it occurred, Mr. Steeves was unaware of any irregularity with the shipment in question. In the Arbitrator's view

further doubt is cast on the credibility of Mr. Leblanc's statement to the extent that it has never formed part of the grievance and was apparently not raised in the grievance procedure up to and including the framing of the joint statement of issue. In the circumstances I cannot accept Mr. Leblanc's assertion that he had authorization from his foreman for what he did.

The material establishes that the grievor's record stood at fifty-nine demerits prior to the incident in question. It also discloses that on a number of prior occasions the grievor has been disciplined for failing to follow required procedures with respect to documentation. In the circumstances the Arbitrator must conclude that the Company had just cause to discipline Mr. Leblanc and that, in light of his relatively short service of less than three years, his prior disciplinary record and the quality of his evidence, there is no justification demonstrated for the substitution of a reduced penalty.

For the foregoing reasons the grievance is dismissed.

March 17, 1989

(Sgd.) MICHEL G. PICHER  
ARBITRATOR