

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1895

Heard at Montreal, Tuesday, 14 March 1989

Concerning

CP EXPRESS & TRANSPORT

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Employee Patrick Brideau, Montreal, Quebec, was issued 20 demerits for alleged insubordination and dismissed for accumulation of demerits on May 6, 1988

JOINT STATEMENT OF ISSUE:

Allegedly certain problems occurred between March 16 and April 8, 1988, involving grievor Brideau. On April 15, 1988, the grievor allegedly refused to be interviewed with respect to these problems. Accordingly, the grievor was suspended for three days on April 18, 19 and 20, 1988.

The Company attempted to again interview the grievor in order to have the interview that was originally scheduled on April 15, 1988.

The grievor never refused to attend an interview but rather wished to be accompanied by Yves Vincent.

The Union asserts that the grievor has been disciplined twice for the same incident; that the discipline and discharge were without just cause; that the grievor has the right to be represented by the member of his choice and that in all the circumstances the discipline and discharge were excessive.

The Union requests reinstatement with full compensation and seniority and removal of demerits.

The Company asserts that the grievance ought to be dismissed.

FOR THE UNION:

(SGD) J. J. BOYCE  
GENERAL CHAIRMAN  
SYSTEM BOARD OF ADJUSTMENT 517

FOR THE COMPANY:

(SGD) B. F. WEINERT  
FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

M. D. Failes - Counsel, Toronto

B. F. Weinert - Manager, Labour Relations, Toronto  
H. Dufresne - Dock Manager, Lachine  
D. Pion - Dock Coordinator, Lachine  
D. Mass - Dock Supervisor, Lachine

And on behalf of the Union:

G. Marceau - Counsel, Montreal  
J. J. Boyce - General Chairman, Toronto  
M. Gauthier - Vice-General Chairman, Montreal  
P. Brideau - Grievor

#### AWARD OF THE ARBITRATOR

For the purposes of this grievance, it should be pointed out that Mr. Brideau was dismissed for an accumulation of 75 demerits because of the employer's decision to assess him 20 demerits for the reasons indicated in its letter of May 6, 1988. Although the letter is not very clear, the Arbitrator must conclude that the 20 demerits were related only to the grievor's refusal to attend an investigation on April 27, 1988. This conclusion is, moreover, supported by Mr. Brideau's disciplinary record which reads, in part, as follows:

April 27 & 28, 1988

Insubordination (Refusing to participate in an investigation on April 27 & 28, 1988).

Consequently, the Arbitrator must limit himself to the question at hand, namely whether this refusal warrants the dismissal of the grievor.

From the evidence it appears that the grievor believed that he had the right to be accompanied at the investigation by Mr. Yves Vincent, his union representative who had a special knowledge of events occurring between 16 March and 8 April 1988, for which the grievor received a three-day suspension. In light of the subject matter of the investigation, the grievor's stance was justified, at least in part. According to the letter of 6 May 1988, Mr. Brideau was called on April 15 "for an interview concerning problems of insubordination on 12 April 1988 ...". (translation) However, the letter of 15 April 1988 from Mr. Henri Dufresne states, in part:

On April 15, 1988 at 9 o'clock, in the presence of Mr. Grard Lemire, I requested that you come to my office in connection with the investigation held on 8 April 1988 and you refused.  
(translation)

It seems likely to the Arbitrator that Mr. Brideau was under the impression that the series of investigations called by the employer, including those of April 15 and April 27, concerned the events of March 16 and April 8. This is why he preferred to be represented by

Mr. Vincent, the union officer who had accompanied him during the first investigation dealing with these events. However, for the reasons given in a previous award respecting a grievance between the same parties, the Arbitrator is satisfied that the grievor did not have the right to insist that only Mr. Vincent should accompany him to the investigation of April 27, 1988. (Ad hoc award concerning grievance of T. Diamchuk, dated February 22, 1989.)

For these reasons, although Mr. Brideau was liable to a measure of disciplinary action for refusing to attend the investigation without being accompanied by Mr. Vincent, the Arbitrator considers that his dismissal was not justified. Given his previous disciplinary record, the Arbitrator does not order the Company to compensate Mr. Brideau for lost wages.

Counsel for the Union contends that the Company calculated the grievor's merit and demerit points on the basis of an erroneous interpretation of the employee information booklet published by the employer. Although this document is used as a standard in handling employee disciplinary records, it nonetheless is not part of the Collective Agreement. That is not to say that the application of these rules is not subject to an adjustment by the application of an Arbitrator's discretion under the Canada Labour Code, or in the exercise of his or her judgement respecting the just cause of a disciplinary action. However, it seems to me that such an adjustment must be made within the purview of a grievance concerning the demerit points in question and not after the fact. On January 8, 1988, the grievor knew, or was in a position to know, that the employer was calculating his record at 55 demerits and did not file a grievance. In light of these facts, without commenting on the merits of its calculation, the Arbitrator cannot accept the position of Counsel for the Union.

For these reasons the grievance is allowed, but only in part. Mr. Brideau is to be reinstated into his employment, without compensation for lost wages and benefits and without loss of seniority, with his discipline record to stand at 55 demerits. Obviously, he must understand his precarious position and the importance of maintaining good conduct in the future.

I remain seized of this grievance to resolve any dispute which may arise respecting the implementation of this award.

March 17, 1989

(Sgd.) MICHEL G. PICHER  
ARBITRATOR