CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1905

Heard at Montreal, Tuesday, 11 April 1989

Concerning

CANADIAN PARCEL DELIVERY
(CP EXPRESS & TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The imposition of ten (10) demerit points on January 26, 1987, for an accident on December 1, 1986; the imposition of twenty (20) demerit points on January 26, 1987, for an accident on December 18, 1986; the imposition of ten (10) demerit points on February 3, 1987, for inadequate rotation of parcels on January 12, 1987; the suspension from January 15 to February 2, 1987, and imposition of sixty (60) demerit points for an alleged assault of a supervisor on January 14, 1987; and the discharge of the Grievor - Robert Martin - an employee of the Company in Montreal on February 3, 1987, as a result of accumulation of over sixty (60) demerit points.

UNION'S STATEMENT OF ISSUE:

The Union and Grievor claim that the imposition of discipline with respect to each of the four (4) instances referred to above was not for just cause. The demerits should be removed from the Grievor's record and he should be reinstated with full compensation (including interest) and benefits.

Alternatively, the Union and Grievor claim that the discipline and ultimate discharge were not justified and a lesser penalty ought to be substituted.

The Company had 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:

G. Despars	- Counsel, Montreal
F. McMullen	- Director, Human Resources, Toronto
G. Claude	- Witness
S. Frost	- Witness

And on behalf of the Union:

K. Cahill	- Counsel, Montreal
J. Crabb	- Secretary/ Treasurer, Toronto
M. Gauthier	- Vice-General Chairman, Montreal
A. MacDuff	- Vice-General Chairman, Winnipeg
W. Whelen	- Witness
C. Decristofaro	- Witness
A. Parent	- Witness
R. Martin	- Grievor

AWARD OF THE ARBITRATOR

The Arbitrator acknowledges that prior to the incidents covered under this grievance, the grievor's disciplinary record stood at 20 demerits and not 25 because of the system of removal of demerits explained to the employees on page 7 of the Driver Instruction Manual.

The first incident took place because the grievor fell asleep at the wheel. Apparently, on the morning of the day in question Mr. Martin's supervisor insisted that the grievor come to work when the grievor called the office to tell him that he was too tired to work. The Union claims that this fact, especially considering the influence of the supervisor, has a bearing on whether the discipline was justified. I cannot accept that argument. Mr. Martin as in the best position to assess his ability and competence as a driver. Furthermore, as a Union representative, he knew how to defend his interests with his supervisor, Mr. Boisvert. He could have refused to work if his lack of sleep made him liable to have an accident, and it was even his duty to do so, without fear of discipline, despite his supervisor's preference (see CROA 1759). He cannot hide behind the dangerous, if not illegal, behavior of his supervisor. In the circumstances, I must conclude that the 10 demerits were deserved.

On the other hand, the Arbitrator cannot agree that Mr. Martin's accident on December 18, 1988 justifies 20 demerits. The accident involved a collision at an intersection with another truck which was sliding on an icy road. However, I believe that the accident committee was right in saying that the accident could have been avoided if Mr. Martin had not advanced his truck into the intersection. In my opinion, this error justified 10 demerits.

I believe that the employer did not provide enough proof regarding the 10 demerits for the alleged inadequate rotation of parcels in Mr. Martin's truck on January 12 and 13, 1987. The grievor gives a plausible explanation of the handling of each of the five parcels in question. This explanation is convincing in light of the weight of the deliveries he had to make.

The last incident occurred on January 14, 1987 during a discussion between Mr. Martin and Mr. Boisvert regarding his discipline for parcel rotation. Without dwelling on the details of the events, I must conclude that during his discussion with Mr. Boisvert when the

grievor refused to sign a disciplinary notice and left the office pushing the door with enough force to make a hole in the wall, he showed a lack of respect toward his supervisor, making him liable to disciplinary measures. However, Mr. Boisvert's subsequent behaviour, suspending the grievor on the spot and following him with threatening gestures, must be seen as provocation to the ensuing tussle. The weight of the evidence is that Mr. Boisvert laid hands on Mr. Martin first, and then both of them grabbed each other's collars before being separated by two employees.

Unfortunately, Mr. Martin later parked his car off Company property, evidently with the idea of waiting for Mr. Boisvert. After consulting a Company officer, Mr. Boisvert felt obliged to call the police. Although Mr. Martin soon left the area after a few words with the police, the Arbitrator has some difficulty accepting his explanation that he stopped in his car close to his Company's terminal just to calm down. He says himself that he was angry but calm and respectful in exchanging words with Mr. Boisvert. Although I can understand why Mr. Boisvert's provocative actions would arouse Mr. Martin's feelings, it remains true that Mr. Martin adopted a deliberately threatening attitude towards his supervisor until the police arrived.

In light of the above findings, before this unfortunate last incident occurred, the grievor's disciplinary record stood at 40 demerits. Even though Mr. Martin's quick-tempered reaction made him liable to disciplinary measure, in view of the management's provocation, I cannot conclude that his dismissal was justified under the circumstances. After working for the Company for seven years and building up a rather serious disciplinary record, Mr. Martin deserved some penalty but not one as serious as losing his job.

For these reasons, the Arbitrator orders that Mr. Martin be reinstated in his position, without loss of seniority but with no compensation for lost wages and benefits and with a total of 40 demerits in his disciplinary record. I remain seized of this grievance to resolve any dispute which may arise respecting the implementation of this award.

April 14, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR