

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2088

Heard at Montreal, Wednesday, 12 December 1990

concerning

CANADIAN PACIFIC LIMITED

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Dismissal of Employee, Mr. A.L. Bernardino, an ETO Storeman, Weston Stores, Winnipeg, for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

Mr. Bernardino was investigated on April 23, 1990 with respect to his tours of duty on April 3 and April 5, 1990.

The investigation was in connection with Mr. Bernardino wearing a "walkman while operating a forklift" on his tour of duty on April 3 and 5, 1990.

As a result of said investigation, Mr. Bernardino was assessed 25 demerits on May 4, 1990.

Also on April 23, 1990, Mr. Bernardino was investigated for his tour of duty on April 11, 1990.

This investigation inquired into Mr. Bernardino's handling of his forklift, and his behaviour with respect to his Supervisor.

On May 4, 1990, Mr. Bernardino was assessed 60 demerits as a result of his actions on April 11, 1990, and was subsequently dismissed for accumulation of demerits.

The Union argued that the assessment of demerits was excessive, particularly in light of his medical condition, and that Mr. Bernardino should be reinstated with compensation for time lost. The Company denied the Union's claim.

FOR THE UNION:

FOR THE COMPANY:

(SGD.) D. J. KENT

(SGD.)

FOR: GENERAL CHAIRMAN

FOR: DIRECTOR OF MATERIALS

There appeared on behalf of the Company:

C. Graham	-- Supervisor, Training & Accident Prevention Purchases & Materials, Montreal
L. G. Winslow	-- Labour Relations Officer, Montreal
J. N. Unrau	-- Witness

And on behalf of the Union:

D. Deveau	-- System General Chairman, Calgary
J. Manchip	-- General Chairman, Montreal
C. Pinard	-- Vice-General Chairman, Montreal
A. Bernardino	-- Grievor

AWARD OF THE ARBITRATOR

The material filed establishes, beyond controversy, that the grievor made himself liable to discipline in April of 1990, both for wearing a 'Walkman' while operating his forklift contrary to direct instructions, as well as for the abusive operation of a forklift during a fit of temper which also involved disrespectful and threatening comments to a supervisor.

However, in the Arbitrator's view there are mitigating circumstances which must be taken into account. I am satisfied, on the basis of medical reports filed in evidence, that the grievor was suffering from an acute anxiety state in April of 1990. This, indeed, was the diagnosis of his own attending physician, which was not challenged by the Company, and which was the basis of a medical disability claim filed on his behalf during that month. Further, there is no dispute that the grievor's prior work record was of a high quality, and that his discipline stood at five demerits prior to these incidents. He has expressed his remorse and apologized to his supervisor at the hearing. In light of these factors and his eight previous years of productive service to the Company, the Arbitrator is not persuaded that the incidents of April of 1990, and in particular the loss of control exhibited by Mr. Bernardino on April 11, 1990, are events which cannot be corrected by the application of a degree of discipline short of discharge.

By the same token, however, his abuse of both a forklift truck and a supervisor in a fit of temper, including at least one verbal physical threat, justifies a serious degree of discipline, notwithstanding the mitigating factor of the medical diagnosis which does not suggest that Mr. Bernardino was entirely unable to control his actions. In all of the circumstances the Arbitrator is satisfied that the grievor should be reinstated into his employment, without compensation and benefits. I am satisfied that the grievor's return to work, with a substituted assessment of thirty-five demerits for the incidents of April 3, April 5 and April 11, 1990, leaving his record with a total of forty demerits, will have the necessary rehabilitative impact in the circumstances. The grievor shall therefore be reinstated forthwith, under the terms described, with his disciplinary record to be adjusted accordingly.

December 14, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR