

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2137

Heard at Montreal, Wednesday, 10 April 1991

concerning

CANADIAN PACIFIC EXPRESS & TRANSPORT

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The assessing of 45 demerits to employee Glen Warner, Kingston, Ontario, for allegedly being in possession of stolen property.

UNION'S STATEMENT OF ISSUE:

On June 21, 1990, CP Police made a search of employee Glen Warner's residence and then proceeded to charge him with being in possession of stolen property.

The Union maintains the interview that was held was untimely and, further, deny (sic) all accusations. The Union requested the demerits be expunged from his record.

The Company refused the Union's request.

FOR THE UNION:

(SGD.) J. J. BOYCE  
SYSTEM GENERAL CHAIRMAN

There appeared on behalf of the Company:

B. F. Weinert            Director, Labour Relations, Toronto

And on behalf of the Union:

J. Crabb	General Secretary/ Treasurer, Toronto
M. Gauthier	Vice-General Chairman, Montreal
P. Hodgekinson	Local Chairman, Brockville
G. Warner	Grievor

AWARD OF THE ARBITRATOR

The explanation advanced by the grievor, who attended at the hearings and gave an explanation un rebutted by any witness called by the Company, is that he was unaware that the article that was in his possession, namely a video camera, was stolen. While the Company was

in possession of written statements suggesting an alternative theory, no direct evidence to support its view was available at the arbitration hearing. In the result, on the evidence before me, it must be found that the explanation offered by Mr. Warner stands uncontradicted by any direct evidence. In the result, the Company has not discharged the burden of establishing, on the balance of probabilities, that there was just cause for the assessment of 45 demerits against the grievor in this case. In light of that conclusion it is unnecessary to address the alternative issue of the timeliness of the Company's assessment of discipline against the grievor.

For the foregoing reasons the grievance must be allowed. The demerits assessed against Mr. Warner shall be removed from his record forthwith.

April 12, 1991

(Sgd.) MICHEL G. PICHER  
ARBITRATOR