CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2253
Heard at Montreal, Tuesday, 12 May 1992
concerning
CANADIAN PACIFIC EXPRESS & TRANSPORT
and
TRANSPORTATION COMMUNICATIONS UNION
EX PARTE
DISPUTE:
The dismissal of employee Robert Boutilier of Dartmouth, Nova Scotia, for alleged stealing from CP Express & Transport Ltd.
UNION'S STATEMENT OF ISSUE:
On November 28, 1991, two CP Police Investigators invited employee Boutilier into the ``old sales room'' as they would like to talk to him. They immediately started asking questions concerning ``things'' that he might have taken from the dock. Mr. Boutilier immediately asked if he should not have a Union representative with him. He was told that their questions had nothing to do with the Union and if he wanted a representative, he could get a lawyer.
The next day, a CPET investigation was held with employee Boutilier by Mr. G. Power. On December 3, 1991, Mr. Boutilier was advised that his services were no longer required as the Company investigation found that he had been involved in stealing from CP Express & Transport Ltd.
The Union contends that Mr. Boutilier was unjustly dismissed. The employee was denied his right to have a Union representative with him while an investigation was conducted at the work place, albeit by the CP Police. The Union also contends that the Company has based its charges on information they received from another party, without the employee or his representative being present at that time, and that in itself disallows the Company from using such information in any further proceedings.
The Union further contends that they have not been shown or supplied with copies of all documents and evidence used by the Company at their interview. The Union also contends that it is a historical fact that employees have been allowed to take damaged goods from the salvage pile. The Union further contends that this employee was a long time, good employee, who had showing at the last entry on the last discipline record available to the Union, a total of 55 merits to his credit, which it would seem were not considered at the time of his dismissal. The Union contends that that point alone would render dismissal as far too severe a penalty for anything shown at his interview.
The Company contends that on evidence supplied to them by the CP Police, they held a proper interview with the employee and found that he had been involved in theft from the Company and that dismissal was both ``equitable and fair''. They also contend that the rights of the employee were in no way violated.
The relief requested is the return of Mr. Boutilier to his regular employment with full compensation and no loss of seniority or benefits.

FOR THE UNION:
(SGD.) J. CRABB
EXECUTIVE VICE-PRESIDENT
There appeared on behalf of the Company:
M. D. Failes
Counsel, Toronto
B. F. Weinert
Director, Labour Relations, Toronto
G. Power
Operations Manager, Dartmouth
L. Bennett
Senior Clerk, Dartmouth
J. Donovan
Investigator, CP Police, Dartmouth
And on behalf of the Union:
H. F. Caley
Counsel, Toronto
J. Crabb
Executive Vice-President, Toronto
M. Gauthier
Division Vice-President, Montreal
R. Boutilier
Grievor
AWARD OF THE ARBITRATOR
On the whole of the evidence the Arbitrator is not satisfied that discharge is the appropriate result. The material discloses that prior to the disciplinary interview Operations Supervisor Greg Power observed a CP Police video tape which purportedly disclosed the grievor pilfering peanuts from a shipment from the ``on hand'' section of the warehouse. In the Arbitrator's view the information so retrieved must, on balance, be viewed as material obtained within the meaning of article 8 of the collective agreement, the content and nature of which the grievor was entitled to be advised at the time of his disciplinary interview on November 29, 1991. The failure of the Company to disclose those particulars in a reasonably fair manner was, in the Arbitrator's view, sufficient to limit the Company's ability to rely on the information so obtained for the purposes of the discipline which is the subject of this grievance. There is, however, an admission on the part of the Union with respect to minor pilferage committed by the grievor. In all of the circumstances, and having particular regard to the fact that the grievor has eighteen years' service and a positive working record, the Arbitrator is satisfied that his reinstatement, without compensation, is not inappropriate in the circumstances. His case is to be distinguished from that of the less candid and more junior employees in the award of Transportation and Communications Union and CPE&T (Blanger, Lelievre and Robidoux grievances) dated September 17, 1990.

For the foregoing reasons the grievance is allowed, in part. Mr. Boutilier shall be reinstated into his employment, without compensation, and without loss of seniority.

May 15, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR