

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2254

Heard at Montreal, Tuesday, 12 May 1992
concerning

CANADIAN PACIFIC EXPRESS & TRANSPORT
and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The dismissal of employee Joseph MacDonald of Dartmouth, Nova Scotia, for alleged stealing from CP Express & Transport Ltd.

UNION'S STATEMENT OF ISSUE:

On or about November 28, 1991, two CP Police Investigators interviewed employee MacDonald concerning ``things'' that he might have taken from the dock. Mr. MacDonald was denied Union representation at this interview. On November 29, 1991 a CPET investigation was held with Mr. MacDonald by Mr. G. Power. On December 19, 1991, Mr. MacDonald 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. MacDonald 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 against the employee on information they received from another party, without the employee or his representative being present at that time, and that is contrary to the terms of the Collective Agreement and 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, which is again contrary to the terms of the Collective Agreement. 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 Mr. MacDonald is a long time, good employee, and from evidence supplied by the Company, it would seem that he had not been disciplined in any way for the last (approximately) 5 years and has in that time contributed greatly to the good operation of the terminal at Dartmouth. It is the Union's contention that in any case, dismissal is far too severe a penalty for anything that was 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. MacDonald 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

J. MacDonald

Grievor

AWARD OF THE ARBITRATOR

The material establishes that at the time of the disciplinary interview the Company had received a verbal report from the CP Police with respect to the particulars of the items allegedly stolen from the ``on hand'' area of the warehouse by the grievor. However, those particulars were not related to him at that time. In the Arbitrator's view the objection taken by Counsel for the Union with respect to non-compliance with article 8 of the collective agreement is well-founded in the circumstances. That article provides as follows:

8.

Whenever a person is interviewed by the Company and the statements of such person are to be used in any proceedings that relate to the disciplining or dismissal of an employee, such employee and his/her Union Representative shall be entitled to be present at such interview and ask questions as are felt appropriate, or read the evidence of such witness and offer rebuttal to such statements.

The Arbitrator is satisfied that the communication between the CP Police and the Company would fall within the concept of discussions that would constitute an ``interview'' within the meaning of article 8 of the above provision. It would not, of course, be strictly necessary for the Union and grievor to be in attendance at such an interview, so long as the content of the evidence or information given by the police witness was reduced to a written form and provided to the Union and grievor to allow the opportunity of rebuttal. That was plainly not done in the instant case. The evidence of Operations Supervisor Greg Power establishes that Mr. Donovan gave him particulars as to the three minor items allegedly pilfered from the warehouse area. The Company was, at a minimum, under an obligation to communicate those particulars to Mr. MacDonald, or his union representative, at the disciplinary investigation which the Company conducted on November 29, 1991. It failed to do so, and in the circumstances cannot rely upon the statements provided by Mr. Donovan.

The grievor does not deny having engaged in a minor degree of petty pilferage of peanuts, candy and cosmetics from packages which he states were already broken open. Without diminishing the seriousness of his actions, having regard to the determination made above, and to the fact that Mr. MacDonald has nine years of service, with no negative notations on his record having been brought to the Arbitrator's attention, coupled with his own statements of remorse, it is appropriate to substitute a penalty less than discharge. The circumstances of this case differ from the award dated September 17, 1990, Re Transportation and Communications Union and CPE&T (Blanger, Lelievre and Robidoux grievances), where the grievors were of short service and lacked candour or remorse, or both.

For the foregoing reasons the Arbitrator directs that the grievor be reinstated into his employment, without compensation and without loss of seniority.

May 15, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR