

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2308
Heard at Montreal, Wednesday, 9 December 1992
concerning
CANPAR

and
TRANSPORTATION COMMUNICATIONS UNION
EX PARTE
DISPUTE:

A matter involving the issuance of 20 demerits to Vancouver employee, B. Thorner for the alleged "Falsification of work records resulting in theft of Company time."

UNION'S STATEMENT OF ISSUE:

The Union, during the grievance process, raised the cogent argument in review of the case file material, that it's position on behalf of the grievors should logically succeed given that Company officials failed to provide the grievor with a "fair and impartial" interview. The Union contends that the interview process contemplated under the terms of the present collective agreement requires that interviews are to be conducted with fairness and impartiality.

The Union maintains that the evidence adduces that the Company violated these tenets by holding an interview which was directly controlled by the same Company official whom allegedly witnessed the incident, and was instrumental in charging the employee through written notification. Further, the Union contends that the Company officials statements were contradictory, and that the grievor's version is more credible.

To date, the Company has declined the Union's request that the demerits issued be justly removed.

FOR THE UNION:

(SGD.) M. W. FLYNN

for: EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

M. D. Failes

Counsel, Toronto

P. D. MacLeod

Director of Terminal, Toronto

D. Dobson

Witness

R. Wettstein

Witness

And on behalf of the Union:

F. Luce

Counsel, Toronto

J. Crabb

Executive Vice-President, Toronto

D. Elickson

Counsel, Toronto

K. Butcher

Witness

B. Thorner

Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond controversy, that the grievor met with fellow pick up and delivery driver K. Butcher for breakfast on the morning of March 13, 1992, shortly after he left the Company's terminal in Burnaby. The evidence adduced by the Company suggests that Mr. Thorner took a break along with Mr. Butcher at a shopping plaza, known as the Brentwood Mall, between 9:10 a.m. and 9:50 a.m. The grievor's time sheet for the day did not note a forty minute break during that period, and further claimed one hour of overtime.

The issue in this grievance is largely one of credibility. The evidence of the Company's witnesses, including Senior Supervisor Dan Dobson and Mr. R. J. Wettstein, who was then its Regional Manager for British Columbia, is based on their respective observations of the employees' vehicles, parked at the Brentwood Mall, and the time they were observed departing that location. Mr. Dobson confirms having first noticed the two delivery vans parked at the mall at or about 9:10 a.m. He then proceeded to pick up Mr. Wettstein at a nearby service station, returning with him to the mall at a time which Mr. Wettstein estimated to be 9:20 a.m., and Mr. Dobson, in his evidence, indicated might have been 9:25 a.m. In either event, both witnesses confirm that the two vans were at the mall when Mr. Dobson returned with Mr. Wettstein. They also both confirm having seen the two employees return to their vehicles to depart at 9:50 a.m., with Mr. Butcher leaving some five minutes later because of adjustments he made to his vehicle. The evidence of Mr. Dobson, which went unchallenged, confirms that he made written notations of certain of the times, including the time of the employees' departure from the Brentwood Mall.

Mr. Thorner claims to have arrived at the mall between 9:20 and 9:25 a.m. He relates that he did some banking at a automated teller machine and waited some five to seven minutes for Mr. Butcher to arrive. According to his estimate they then proceeded to have breakfast, leaving the restaurant to return to their vehicles at about 9:45 a.m. Mr. Butcher states that he arrived at the mall at approximately 9:25 a.m. and estimates his departure at fifteen to twenty minutes later. The thrust of the position of both employees is that they were taking a fifteen minute break, to which they were entitled.

The Arbitrator has substantial difficulty with the evidence of the grievor, as well as that of Mr. Butcher. Firstly, unlike Mr. Dobson, who had reason to be concerned at the sight of two vans parked at the Brentwood Mall, Mr. Thorner and Mr. Butcher had little or no reason to pay close attention to the time at which they started and finished their visit to the mall. Additionally, the estimate which Mr. Thorner advances, with respect to the time which he took to proceed from the terminal to the mall, apparently after making a delivery which was geographically out of the way, leaves serious questions as to the reliability of his assessment of the times involved. The best evidence, in the Arbitrator's view, would suggest that a drive directly from the Burnaby terminal to the Brentwood Mall, along the Lougheed Highway at or about 9:00 a.m. would take little more than ten or fifteen minutes. It would, in my view, be implausible for Mr. Thorner to deviate southward a substantial distance to deliver a single parcel, before proceeding in a partially reverse direction towards the mall, given that he would be backtracking over the same territory in any event to proceed to his subsequent deliveries. On the whole of the evidence, the grievor's evidence is unconvincing and the account of events tendered by Mr. Dobson, supported by Mr. Wettstein, seems more credible. Having regard to the entirety of the evidence, the Arbitrator is satisfied that the grievor did fail to properly record his hours of work on March 13, 1992, and that in all likelihood as much as half of his claim of an hour's overtime may have been falsely or recklessly made, in light of the extended time taken for his breakfast break at the Brentwood Mall on the morning in question. Given that the employees working in the Company's delivery service are largely unsupervised, and are responsible for their own time records and overtime claims, the job in question involves an implicit relationship of trust. A violation of that obligation, whether calculated or careless, is deserving of a serious measure of discipline. In the circumstances the Arbitrator is satisfied that the assessment of twenty demerits was within the appropriate range of discipline for the grievor's failure to maintain an accurate record of his time worked on March 13, 1992. I am also satisfied that the grievor was provided with a fair and impartial interview. For the foregoing reason the grievance must be dismissed.

December 15, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR