

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2343

Heard at Montreal, Thursday, 11 March 1993

concerning

CANADIAN PACIFIC EXPRESS & TRANSPORT

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The dismissal of CPET employee R. Parenteau, Montreal, Quebec, for alleged theft.

UNION'S STATEMENT OF ISSUE:

On or about March 10, 1992 employee R. Parenteau, without representation, was questioned and shown video tapes taken during the period of February 22nd to 26th, 1992, by CP Police,

On March 10, 1992, employee R. Parenteau was suspended pending the holding of the required interview under the terms and conditions of article 8 of the collective agreement.

On March 18, 1992 this interview was held and on March 19, 1992 the employee was dismissed.

The Union asserts the Company has violated articles 8.2, 8.3, 8.5 and 8.8 of the collective agreement.

The Union further asserts the dismissal is severe and unjustified and requested employee Parenteau be reinstated with full compensation, seniority and benefits.

The Company declined the Union's request.

FOR THE UNION:

(SGD.) J. CRABB

EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

R. N. Skelly

Counsel, Montreal

B. F. Weinert

Director, Labour Relations, Toronto

M. Mousseau

Terminal Manager, Lachine

J. Donovan

Investigator, CP Police, Montreal

And on behalf of the Union:

K. Cahill

Counsel, Montreal

J. Crabb

Executive Vice-President, Toronto

J. Marr

Vice-President, Saint John

R. Parenteau

Grievor

AWARD OF THE ARBITRATOR

The grievor does not deny having taken the property of shippers who are clients of the Company. Following the recording of a video cassette which reveals Mr. Parenteau in the act of removing objects from boxes in the warehouse where he works, and following a search of his residence, he admitted to having stolen items such as gloves, Mennen deodorant, shampoo and ladies' perfume, according to him perhaps twenty times. Even if the items which were stolen have little value in themselves, the CP Police estimate that the merchandise retrieved from Mr. Parenteau's home had a total value of about \$1,000.00

The grievor has 39 years' service. In such a circumstance it is natural to look for mitigating factors which could justify a reduction in the disciplinary penalty. In the instant case, that are not any mitigating factors in evidence, with the exception of the length of his service and his clear discipline record.

Unfortunately, there seem to be more negative than positive factors in the balance. For example, it appears that when he was stopped, by pure chance, Mr. Parenteau had in his pocket some wallets which he had stolen that same morning. Furthermore, in defending himself when accused of having stolen some work gloves, he explained that these had been stolen at a time when the warehouse belonged to Smith Transport, prior to its being taken over by the Company. In sum, it appears from the evidence that Mr. Parenteau has been "pilfering" from the warehouse for many years.

The Arbitrator cannot accept the Union's claim to the effect that the disciplinary interview was in violation of the terms of article 8 of the collective agreement. During this interview the supervisor gave to Mr. Parenteau and his Union representative an "Occurrence Report" received from the police, which reads as follows:

QQINDENT OCCURRENCE REPORT -- ATLANTIC REGION

QQINDENT On March 10, 1992, Investigators J.J. Donovan and R. Boulet questioned CP Express & Transport employee Raymond PARENTEAU, D.O.B. 7 August 1933, of 879 -- 25th Avenue, Lachine, Que., at the Lachine Terminal at 4415 Fairway in Lachine, Que., concerning thefts from cargo in the Over, Short and Damaged Department. The employee denied stealing merchandise in spite of being shown video tapes which showed him pilfering items. He was subsequently found to have two nylon wallets, one black marked "Judas Priest" and one burgundy marked "Kiss". The employee had tried to get rid of the wallets but was caught doing so. He subsequently made an inculpatory statement under police caution admitting to stealing them.

QQINDENT The employee's residence was searched and various items were found including dress and work gloves, shampoo and various Mennen products with a total value of about \$1,000.00. The employee was questioned a second time and gave a second inculpatory statement under police caution, admitting to the theft of various items from the O.S.&D. Department.

This report represents the only documentation and information in the possession of the Company at the time of the interview. Given the fact that the Company was not the author of the report, which had been provided by the CP Police, I cannot accept the objection of the Union based on the fact that the report was written only in English. In any event, the grievor's Union representative is bilingual and the Terminal Manager, Mr. Marc Mousseau, himself verbally translated the contents of the report for Mr. Parenteau. The latter did not deny the accusation, and did not give any explanation. Mr. Parenteau and his representative merely expressed their objections to the effect that the interview was not in accordance with article 8 of the collective agreement. That article reads, in part, as follows:

QQINDENT 8.2

QQINDENT Whenever an employee is to be interviewed by the Company, with respect to his/her work or his/her conduct in accordance with Article 8.1, an accredited Union Representative must be in attendance, and the employee shall be advised in writing of such interview, including notice of the subject matter of the interview. Such interview must be held within fourteen (14) calendar days from the date the incident became known to the Company, unless other mutually agreed. In the event an accredited representative is not reasonably available, a fellow employee, selected by the employee to be interviewed, shall be in attendance. Nothing herein compels an employee to answer any questions.

QQINDENT 8.3

QQINDENT Failure to comply with Article 8.2 shall render any conclusion null and void, and any statements at such interview inadmissible at any subsequent proceedings.

QQINDENT 8.4

QQINDENT 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 witnesses and offer rebuttal to such statements.

QQINDENT

QQINDENT Failure to comply with this Article shall result in the Company not being able to rely upon the statements of such person(s) in any proceedings.

QQINDENT 8.8

QQINDENT Copies of all documents rendered as per Article 8.2 shall be given to the employee and the Local Protective Chairman, within four (4) working days following the interview.

There is nothing in the preceding articles which inhibits the Company from relying on a police report to initiate a disciplinary interview. In the instant case, the grievor had been properly advised of the nature of the accusation against him, and of the specific contents of the police report. It is not claimed that a copy of the report was not provided to Mr. Parenteau, and it is clear that there were no other documents or reports in the possession of the Company. In the circumstances, I must come to the conclusion that the Employer did meet the requirements of article 8 of the collective agreement.

For these reasons the grievance must be dismissed.

March 12, 1993

(Sgd.) MICHEL G. PICHER
ARBITRATOR