Canadian Railway Office of Arbitration
Case No. 2574
Heard in Montreal, Wednesday, 11 January 1995
concerning
Canadian Pacific Express & Transport
and
Transportation Communications Union
ex parte
Dispute:

On October 23rd, 1992, employee P. Jaeger was suspended from driving duties for six (6) months for allegedly "endangering life of forklift driver by pulling away from dock without checking as instructed". The incident is alleged to have occurred on October 14th, 1992.

Ex Parte Statement of Issue

An investigative interview was held on October 20th, 1992.

The grievor denies any wrongdoing.

The Union asserts a violation of article 8 and any other relevant article of the collective agreement and requests that the grievor be fully compensated for the loss of earnings, the correspondence be removed from his file and such further or other remedy as may be appropriate.

for the Union:
(sgd.) G. Rendell
for: Executive Vice-President, Trucking

There appeared on behalf of the Company:
B. F. Weinert – Director, Labour Relations, Toronto
W. B. Smith – Area Manager, Vancouver

And on behalf of the Union:
F. Luce– Counsel, Toronto
D. J. Bujold– National Secretary Treasurer, Ottawa
M. Prebinski– Education Director, Ottawa
P. Jaeger – Grievor

award of the Arbitrator

The thrust of the grievance is that the Company applied a double form of discipline to Mr. Jaeger. It is common ground that he was suspended from driving for a period of six months as a result of the negligent operation of his tractor trailer which resulted in damage to a tow motor and a serious risk to the safety of another employee. The letter assessing discipline against the grievor, signed by Area Manager W.B. Smith and dated October 23, 1992 states, in part, as follows:

Notwithstanding the above, as your recent incident certainly warrants progressive disciplinary measures, please be advised that the Company is removing you from any driving position for a period of 6 months. In addition, as many of your incidents question your abilities as a professional driver, you must also take a PDIC course. Furthermore, as you will be removed from the driving ranks at the Calgary Terminal, you will be able to work the dock as an unassigned employee, however you will not be allowed to bump any bulletined dock position but rather will be able to work any unassigned or extra work available on the dock.

Upon the completion of your 6 month suspension from the driving ranks, you will be requalified by the Company's safety officer before being considered able to assume a driving position.

This discipline may seem harsh, but given your continued level of offenses, the Company without prejudice is giving you one final chance to become the professional driver we require.

It is not disputed that for at least part of the time he worked on the dock, Mr. Jaeger was treated as the most junior unassigned dock employee. The Union objects to that further sanction as being beyond the initial measure of discipline, representing a form of double discipline for the same infraction.

Upon considering the entirety of the material before me I cannot agree. The Company's representative, Mr. Weinert, stated at the hearing that in the discussions leading to the letter of October 23, 1992 between the Company and the Union, which was represented by Union Vice-President A.G. MacDuff, it was agreed that Mr. Jaeger was to be placed on the dock as the most junior unassigned employee for the six month period of his suspension from driving. Because Mr. Weinert was present to attest to that understanding, and no contrary evidence could be advanced by the Union, as Mr. MacDuff was not present, I am compelled to conclude, on the balance of probabilities, that the treatment of Mr. Jaeger in respect of assignments was in accordance with an understanding reached between the Company and the Union. While it would, of course, have been preferable for that aspect of the understanding to have been reflected in the letter of Mr. Smith, it is the substance of the agreement between the parties, and not the form of its documentation, which must ultimately govern. For the reasons related, I am satisfied that the understanding reached between the parties is accurately described in the representations made by the Company's representative.

For the foregoing reasons the grievance must be dismissed.

13 January 1994 _____

MICHEL G. PICHER
ARBITRATOR