

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1552

Heard at Montreal, Tuesday, September 9, 1986

Concerning

### CANADIAN PARCEL DELIVERY

and

### BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

### EX PARTE

#### **DISPUTE:**

Concerns three Q & A's for non-attempts all taken March 3, 1986, thirty demerits and dismissal without just cause or responsibility having been established for alleged infractions on non-attempting so-called priority freight on February 18, 19, 20, 1986, with the thirty demerits also issued March 3, 1986.

#### **BROTHERHOOD'S STATEMENT OF ISSUE:**

On February 21, 1986, Mr. G. McIvor, Driver Representative CanPar, Edmonton, Alberta, was notified in writing on three separate dates of non-attempting priority freight, that investigations to be conducted by Question and Answer Statements at 4:30 p.m., 5:00 p.m., and 5:30 p.m. on March 3, 1986.

The Question and Answer meeting was held March 3, 1986, at the times specified. G. McIvor was advised in writing March 3, 1986, that he was issued thirty demerit marks as a result of the three Q & A's, and, on March 7, 1986, he was informed by Supervisor R. Johnson that his services with CanPar were terminated immediately due to the thirty demerit marks issued which resulted in accumulation of seventy-five demerit marks.

The Union's position is that alleged non-attempting so-called priority freight is not an infraction of any known rules or regulations and that proper investigations were never carried out, that this dismissal is viewed as a mockery of justice in which this employee's basic human rights have been abused when the Company removed his right to work and wages.

The Company's position is that G. McIvor repeatedly failed to carry out his responsibility to deliver priority freight and that the discipline assessed will remain.

The relief requested is for the complete removal of the thirty demerit marks and that G. McIvor be returned to Company service and paid all wages and other fringe benefits protections subsequent to March 3, 1986.

#### **FOR THE BROTHERHOOD:**

**(SGD.) J. J. BOYCE**  
**SYSTEM GENERAL CHAIRMAN**

There appeared on behalf of the Company:

D. Bennett – Human Resources Officer, Toronto

And on behalf of the Brotherhood:

G. Moore – Vice-General Chairman, Moose Jaw

### **AWARD OF THE ARBITRATOR**

Driver Representative G. McIvor grieves his discharge. His employment was terminated as a result of the imposition of 30 demerit marks, for an accumulated total of 75 demerit marks. The 30 demerits relate to the grievor's alleged non-attempt to deliver priority freight on his assigned route in Calgary on February 18th, 19th and 20th, 1986.

The material establishes that on the three days in question the grievor was assigned a delivery route which involved ninety-five stops. He completed seventy-seven stops, in addition to two pick-ups. It is not disputed that in the circumstances some priority freight went undelivered. The Company submits that in light of the grievor's record, which includes prior instances in which he was assigned demerit marks for non-attempts, the accumulation of 60 demerits is sufficient cause for dismissal.

On the days in question the grievor was delivering the T2R Route, and had been assigned in addition, further deliveries on Seventeenth Avenue. It is not disputed that the Seventeenth Avenue assignment was entirely new to the grievor. There is some conflict in the material, however, as to the length of time he had been assigned to the delivery route T2R. Mr. McIvor's written statement filed in evidence is that he had been on that route for less than two weeks, and was therefore not sufficiently familiar with it to meet productivity standards. The Company maintains, on the other hand, that he had been assigned that territory for some five weeks.

No documentary evidence was tendered to substantiate the position of the Company, which bears the burden of proof in these proceeding. It is not disputed that Mr. McIvor's daily work reports would disclose precisely the amount of time he had worked on the T2R Route. The only supporting material filed by the Company was a note signed by Calgary Supervisor R. Johnson stating "to the best of my recollection", the grievor was on the route in question for approximately five weeks. In light of the Company's failure to produce the best evidence, the Arbitrator must prefer the position advanced by the Union, supported by the grievor's own evidence.

In the circumstances, I therefore conclude that Mr. McIvor's productivity performance on the dates in question was due in substantial part to his limited experience on the T2R run, as well as the fact that he had no prior exposure to deliveries on Seventeenth Avenue. He is not entirely faultless, however. The material discloses that he was aware, or should have been aware, that he had failed to deliver priority freight, and yet he did not bring this to the attention of any supervisor or terminal staff, as required by normal procedures. In light of that infraction, and in consideration of the grievor's prior disciplinary record, the Arbitrator orders that the 30 demerit marks assessed against the grievor be stricken from his record, and that he be reinstated without compensation or benefits, but without loss of seniority. I remain seized of this matter should the parties be disagreed respecting the interpretation on implementation of this award.

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**