

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1712

Heard at Montreal, Tuesday, 10 November 1987

Concerning

CP EXPRESS AND TRANSPORT (CANPAR)

And

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

DISPUTE:

Concerns ten (10) demerit marks being issued to employee M. Grolla, CanPar, Driver Representative, Saskatoon, Saskatchewan, for alleged "not properly pre-tripping Unit No. 797200 on April 10, 1987"

JOINT STATEMENT OF ISSUE:

The Union's position is that on April 10, 1987, like any other day, Mr. M. Grolla did properly inspect his vehicle, Unit No. 797200, as required and spelled out in the Driver Instruction Manual, page 8, a.m. pre-tripping, step by step, which we say does not call for checking the power steering fluid level daily, weekly, or even yearly. We say that Driver Supervisor D. Sikorsky went out of his way to single out that driver for discipline, through demerits, which resulted in the dismissal of M. Grolla on April 28, 1987.

The Company's position is that the daily pre-trip inspection policy includes checking the power steering fluid level, that 10 demerits are minimal and would remain, and denied the grievance.

The relief requested is for the complete removal of the 10 demerits and that all mention thereof be expunged from the work record of Mr. M. Grolla.

FOR THE BROTHERHOOD

(SGD) J. J. BOYCE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) B. D. NEILL
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

B. P. Smeenk – Counsel, Toronto
D. J. Bennett – Labour Relations Officer, Toronto
D. Sikorsky – Terminal Supervisor, Saskatoon

And on behalf of the Brotherhood:

N. L. Jessin – Counsel, Toronto
J. J. Boyce – General Chairman, Toronto
M. Grolla – Grievor

AWARD OF THE ARBITRATOR

The grievor was disciplined for allegedly failing to do a pre-trip check of his vehicle on the morning of April 10, 1987. Specifically, the Company maintains that he was obliged to check the level of the power steering fluid in the vehicle, by means of a dipstick. The grievor maintains that he was never advised the checking of the power steering fluid was a part of the daily pre-trip requirement, and in fact did not know where the dipstick was located on that particular vehicle.

A forty-five page Driver Instruction Manual which governs, among other things, pre-trip inspections, was filed in evidence. It contains, in part, the following:

PRE-TRIP INSPECTION

Drivers perform a pre-trip inspection of their vehicles completing the reverse side of their Work Summary Card, recording a visual check of their vehicle, e.g. tires and exterior damage, etc. Also an under-the-hood check of oil level, coolant and wash fluid and an interior check of gas, brakes, lights, flashers, wipers and horn. See sample on Page 10.

There is plainly no indication in the foregoing document that a daily check of the fluid level of the power steering is required. Similarly, the pre-trip inspection checklist card, which must be filled by each driver on a daily basis at the time of the pre-trip inspection, and contains specific boxes to be ticked off with headings such as "oil", "engine coolant" and "windshield washer", makes no mention of power steering fluid.

While the Company sought to introduce in evidence written statements by employees more junior than the grievor indicating that at the time of their hire they were instructed that the power steering fluid should be checked, there is no similar evidence with respect to Mr. Grolla. On the contrary, it appears that he was one of the first drivers hired into the Saskatoon terminal, and at that time was given no specific instruction that daily inspection of the power steering fluid was a requisite part of the pre-trip routine each morning.

It is well established that to ground discipline on the violation of a rule, it is incumbent on the Company to establish that the employee knew, or reasonably should have known, the requirements of the rule in question. Where it is established that a rule is not adequately communicated to an employee, in circumstances where he or she could not reasonably be expected to be aware of it, failure to observe the rule cannot be held against the employee for disciplinary purposes upon a first infraction. (*See CROA 1681*)

That is the situation which obtains in this case. While it is open to the Company to establish rules particular to its Saskatoon terminal, including operating procedures in respect of the daily inspection of power steering fluid, I am satisfied on the material before me that no such rule was ever communicated to the grievor. While, as he admitted in evidence, he was aware that to make such a check occasionally was a useful thing, and he had done it on some vehicles with which he was more familiar, it was never impressed upon him that to do so was an absolute daily requirement, failure of which would attract discipline. For these reasons the grievance must be allowed. The ten demerits assessed against the grievor shall therefore be removed forthwith from his record.

(sgd.) MICHEL G. PICHER
ARBITRATOR