

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1828

Heard at Montreal, Thursday, 15 September 1988

Concerning

### CANADIAN PARCEL DELIVERY (CP EXPRESS AND TRANSPORT)

And

### TRANSPORTATION COMMUNICATIONS UNION

#### **DISPUTE:**

The assessment of 55 demerits and dismissal of CanPar employee J. Turcot, Montreal, Quebec

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

Employee Turcot was originally assessed a total of 65 demerits on four different 389-001R forms. These demerits were reduced by 10, at Step 3 of grievance procedures, leaving a total of 55 demerits assessed, resulting in his dismissal. The assessment of demerits is broken down as follows:

Accident and abuse of vehicle	25
Failing to report an accident	15
Failure to appear for Accident Investigation	15
TOTAL	55 DEMERITS

It is the Union's position employee Turcot did not abuse the vehicle and used the equipment supplied by the Company to endeavour to free the vehicle from the ditch. This accident was reported to Supervisor Claude Trottier, and it was not until six days later that Supervisor Trottier requested this employee to complete an Accident Report.

The Union's position concerning the accident is that the employee had no other choice than to put the vehicle in the ditch, as an oncoming tractor trailer had crossed the centre double line. The actions of employee Turcot saved a head-on collision which probably would have caused death.

With regards to not appearing at the investigation, the employee was off work on compensation.

The Union requested all demerits assessed be removed, and employee Turcot be reinstated with full seniority and benefits, and reimbursed all monies lost due to the dismissal.

The Company denied the Union's request stating:

1. The accident and vehicle abuse can be regarded as being one incident.
2. Mr. Turcot failed to report the accident.
3. The demerits assessed for not appearing are irrelevant to Mr. Turcot's dismissal and will remain.

#### **FOR THE UNION:**

**(SGD.) J. J. BOYCE**

GENERAL CHAIRMAN, SYSTEM BOARD OF ADJUSTMENT 517

There appeared on behalf of the Company:

- D. D. Francis – Counsel, Toronto
- D. J. Bennett – Labour Relations Officer, CanPar, Toronto
- G. Claude – Personell Manager, Montreal
- C. Trottier - Supervisor

And on behalf of the Union:

- G. Long – Counsel
- J. Crabb – Secretary/Treasurer, Toronto
- M. Gauthier – Vice-General Chairman, Montreal
- J. Turcot – Grievor

### **AWARD OF THE ARBITRATOR**

The Arbitrator is satisfied that the evidence supports the view of the Company in that the grievor did fail to report an accident. The evidence, however, with respect to his alleged abuse of his vehicle, and his failure to appear for an accident investigation is equivocal at best. There is, moreover, no direct evidence that he contributed to the accident by his own negligence or error in judgement.

The grievor's un rebutted testimony is that he was forced to drive his delivery van onto the side of the road to avoid a collision with an oncoming tractor-trailer on or about November 18, 1986. After his efforts to drive his van out of the ditch failed, he was forced to call for the services of a tow truck. Once towed out, however, the vehicle drove without apparent difficulty for at least a day and a half thereafter. While it is not disputed that repairs to the clutch of the truck were performed after that lapse of time, bearing in mind that the Company has the burden of proof in these proceedings, I cannot conclude that the evidence is sufficient to fasten responsibility for that fact upon the grievor.

On the other hand, I do not accept Mr. Turcot's evidence about having made a verbal report to Supervisor Claude Trottier with respect to the accident on the afternoon of the same day it occurred. By his own admission, the grievor's recollection of that day, some two years ago, is less than fresh. I am inclined to prefer the evidence of Mr. Trottier, the grievor's supervisor who routinely processes accident reports, that no such communication was made to him.

Lastly, there is no evidence whatever to sustain the Company's allegation that the grievor wrongfully failed to appear at a committee meeting called to investigate his accident. It is common ground that he was absent from work due to a compensable injury at the time of that meeting and the Company was unable to call any evidence to rebut Mr. Turcot's statement that he received no notification written or otherwise, in advance of the meeting.

Prior to the incidents related above, the grievor's disciplinary record stood at fifty demerits. While the assessment of fifteen further demerits for his failure to report the accident would place the grievor in a dismissable position, I am satisfied on the whole of the evidence that this is an appropriate case for the Arbitrator to exercise his discretion to substitute a lesser penalty, and to give the grievor a second chance to demonstrate that he can conform to necessary standards. It is therefore ordered that the grievor be reinstated into his employment, without compensation or benefits, and without loss of seniority, with his disciplinary record to stand at fifty demerits. I retain jurisdiction in the event of any dispute between the parties regarding the interpretation or implementation of this award.

September 16, 1988

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