

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1951

Heard at Montreal, Thursday, 14 September 1989

Concerning

### BULK SYSTEMS (CP EXPRESS & TRANSPORT)

And

### TRANSPORTATION COMMUNICATIONS UNION

#### **DISPUTE:**

The assessing of 60 demerits to employee Lou Harold, Oakville, Ontario, for allegedly displaying deliberate disobedience which resulted in his dismissal.

#### **JOINT STATEMENT OF ISSUE:**

On July 1, 1989, Employee L. Harold was dispatched two loads of petroleum. After completing the first load, he received a message to contact dispatch, which he adhered to. The dispatcher requested he take an extra trip after the completion of the second load. Mr. Harold suggested he proceed to Dunnville instead of the original second dispatch; his request was refused. As this was a statutory holiday, Mr. Harold did not wish to work beyond his 8 hours or the original two dispatches, as he had made earlier plans for which he advised the dispatcher. Consequently, he was assessed 60 demerits and dismissed.

The Union grieved the 60 demerits and dismissal stating Mr. Harold worked his regular shift, relying on Article 5 of the Agreement, and requested he be reinstated with full seniority and reimbursed all monies and benefits lost while held out of service.

The Company denied our request stating the 60 demerits were appropriate and therefore the dismissal shall remain in force.

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

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

#### **FOR THE COMPANY:**

**(SGD) G.E.D. LLOYD**  
VICE-PRESIDENT & GENERAL MANAGER

There appeared on behalf of the Company:

C.W. Peterson	– Counsel, Toronto
G.E.D. Lloyd	– Vice-President & General Manager, Oakville
R.W. Seymour	- Area Terminal Manager, Oakville
B. Powell	– Witness

And on behalf of the Union:

M. Church	– Counsel, Toronto
J. Crabb	– Secretary/Treasurer, Toronto
M. Gauthier	– Vice-General Chairman, Montreal
L. Harold	– Grievor

## **AWARD OF THE ARBITRATOR**

Having regard to the whole of the evidence the Arbitrator is satisfied that the grievor was insubordinate in his communication with Dispatcher Powell on July 1, 1989, in consequence of which he was deserving of discipline. In considering the facts of the incident, however, it appears that both Mr. Harold and Mr. Powell were under some stress as they spoke with each other respecting the Company's need, on the one hand, to service an emergency delivery of gasoline to a gas bar in Dunnville, and Mr. Harold's problem of meeting a personal commitment later that day. No doubt if each had been more open and candid with the other they might have mutually explored constructive alternatives rather than move, within a very brief conversation, to the confrontation which occurred.

The grievor's record is far from exemplary and he is not a long service employee. On the other hand, as noted, the culminating incident might have been avoided by a more thorough attempt at communication on the part of the Company's dispatcher, as well as better judgement by the grievor himself with respect to explaining his personal circumstances. On the whole of the evidence I do not consider that this is an incident that justifies termination. In considering the appropriate substitution of penalty, however, the Arbitrator notes that even at the stage of investigation by the Company's Area Terminal Manager, Mr. R.W. Seymour, the grievor was still not forthcoming with respect to the nature of his personal commitment and failed even then to explain to the Company that he had an obligation to attend a family wedding. In these circumstances it is difficult to justify a conclusion that the Company did not have prima facie grounds to consider discharge as the appropriate response. For the reasons related above, however, the Arbitrator is satisfied that the substitution of a suspension, extending from the date of discharge to the date of reinstatement pursuant to this award, is a more appropriate alternative.

For the foregoing reasons the grievance is allowed in part. The grievor shall be reinstated forthwith, without compensation or benefits, and without loss of seniority, the period from the date of his discharge and his reinstatement to be recorded as a suspension for disobedience. Given his prior disciplinary record Mr. Harold must appreciate the need to scrupulously avoid any conduct that might attract discipline in the future.

**September 15, 1989**

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