

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2010

Heard at Montreal, Thursday, 15 March 1990

Concerning

CP EXPRESS & TRANSPORT

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Employee Ed Pokonzie, Spareboard Driver, Obico, was assessed 15 demerits and discharged for alleged unauthorized stops from Soo to Toronto on May 26 and 27, 1989.

JOINT STATEMENT OF ISSUE:

The grievor filed a grievance with respect to the above.

The Union asserts that the 15 demerits were issued without just cause (contrary to Article 8); that the grievor had phoned Central Dispatch to ascertain if there was any hurry for the load and was advised to take his time; that the grievor needed the rest.

In the alternative, the penalty is too severe.

The Union requests the the 15 demerits be removed from the grievor's record and that the grievor be reinstated with full pay and benefits.

The Company has denied the Union's request.

FOR THE UNION:

(SGD) J. J. BOYCE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) B. F. WEINERT
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

M. D. Failes – Counsel, Toronto
B.F. Weinert – Manager, Labour Relations, Toronto

And on behalf of the Union:

M. Church – Counsel, Toronto
J. Crabb – Secretary/Treasurer, Toronto
E. Pokonzie – Grievor

AWARD OF THE ARBITRATOR

The record discloses that Mr. Pokonzie had previously been assessed ten demerits for being too slow in the performance of a run. On May 27, 1989 he drove a return run from Sault Ste. Marie to Toronto in a period of time which substantially exceeded the time normally allowed for that trip. While Mr. Pokonzie invoked the fact that he was tired and needed to stop and take a nap en route, that in my view is not a full answer to the legitimate concerns of his employer.

It is not disputed that the grievor had ample time to rest between his arrival in Sault Ste. Marie and his departure for Toronto. As a general matter it is his obligation to obtain the necessary rest and sleep, and to return to his work assignment fit to perform his duties with reasonable efficiency. In the instant case there are no extraordinary or mitigating facts pleaded on behalf of Mr. Pokonzie to explain why he was not sufficiently rested to perform his day's work, and needed to stop for sleep during his run. In the circumstances I am not persuaded that his failure to meet the Company's performance standard, which I accept as reasonable, is justified on the evidence before me. Given that he had previously been assessed ten demerits for a similar occurrence, I am unable to conclude that fifteen demerits is not an appropriate measure of discipline in the circumstances.

For these reasons the grievance must be dismissed.

March 16, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR