

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2012

Heard at Montreal, Thursday, 15 March 1990

Concerning

CP EXPRESS & TRANSPORT

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Employee Ed Pokonzie, Spareboard Driver, Obico, was assessed 30 demerits and discharged for alleged falsification of trip sheet and unauthorized bobtail on June 2, 1989.

JOINT STATEMENT OF ISSUE:

The grievor filed a grievance with respect to the above.

The Union asserts that the 30 demerits were issued without cause (contrary to Article 8); the grievor has on many occasions since he started, when no supervisor was available, sign(ed) and initial(ed) trip sheets; the grievor told dispatch he was running out of time; had waited two hours for the load and took the vehicle back to Hamilton.

In the alternative, the penalty is too severe.

The Union requests that the 30 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 material before the Arbitrator establishes, beyond controversy, that on June 2, 1989 the grievor was dispatched from Hamilton to Fort Erie to pick up a trailer. As the load was not yet received in Fort Erie he was required to wait for over two hours. At or about the time he was to run over the limit of his lawful driving hours, when the trailer was not yet in, he communicated with the Central Dispatch, advising them of his situation and indicating that he could not wait much longer. According to his account of the events, he told them that he would wait ten or fifteen minutes more and then go. When the trailer did not appear Mr. Pokonzie departed, apparently without consulting anyone with respect to where he should garage his tractor unit. Of his own initiative he returned to Hamilton, without any instruction or authority to do so. It is not disputed that his tractor unit might have been left at Fort Erie, or alternatively in St. Catharines for the greater convenience of the Company.

The allegation of falsification of records is based upon the grievor having placed his own initials on the section of the trip sheet relating to the time spent waiting at Fort Erie. It is not disputed that that entry should have been signed by an authorized person, apparently a bargaining unit member at Fort Erie named Chuck Green. According to Mr. Pokonzie Mr. Green was not then available. It is not disputed that in the strictest sense the evidence does not disclose any attempt at forgery or fraud. The initials placed upon the document are plainly the grievor's, and there is no objective evidence to suggest that the time recorded is not accurate. What the evidence discloses, therefore, more precisely is a failure to maintain the proper documentation, rather than the more serious allegation of "falsification" of Company documents. The Arbitrator makes that finding in light of the uncontradicted evidence that on a number of prior occasions Mr. Pokonzie had similarly entered his own initials on trip sheets for timekeeping entries when authorized personnel were not readily available. While he may have been wrong in doing so, there is no evidence before me to establish that his practice was motivated by any intention to register false entries or make fraudulent claims for wages.

In accordance with the findings in a number of prior awards (*see CROA 2007 - 2011*), the grievor's disciplinary record should have stood at thirty demerits at the time of this incident. The most serious infraction previously recorded was fifteen demerits for his failure to meet reasonable performance standards in a return run from Sault Ste. Marie on May 27, 1989. The issue then becomes whether the assessment of thirty demerits was appropriate in the circumstances of the grievor's conduct on June 2, 1989, which resulted in his discharge.

In the Arbitrator's view the assessment of thirty demerits would be excessive in light of the facts disclosed in evidence. While there is obvious validity to the concern of the Company that the grievor has on more than one occasion ignored instructions and rules with respect to carrying out assignments and properly maintaining documentation, I am not persuaded that there is a demonstrated degree of recidivism or deliberate deception, as suggested by the Company, which then justified Mr. Pokonzie's discharge. By the same token, his previous infractions, and reckless disregard of normal procedures in proceeding back to Hamilton without any authorization, plainly made him liable to a serious measure of discipline in the circumstances. On balance, I am satisfied that the substitution of a penalty less than discharge, albeit without compensation, is appropriate in these circumstances.

For the foregoing reasons the Arbitrator orders that the record of the grievor be amended to disclose the assessment of twenty demerits for his conduct on June 2, 1989. While the parties may speak to the precise form of the written record, it should be amended to reflect that the twenty demerits are assessed for improper record keeping and unauthorized bobtail on the date in question. For the reasons related above, the grievor shall further be reinstated into his employment, without compensation or benefits, and without loss of seniority, with his record to stand at fifty demerits.

March 16, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR