

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2034

Heard at Montreal, Wednesday, 13 June 1990

Concerning

### **BULK SYSTEMS (CP EXPRESS & TRANSPORT)**

And

### **TRANSPORTATION COMMUNICATIONS UNION**

#### **DISPUTE:**

The issuing of 25 demerits to employee C. Shea, Bulk Systems, Oakville, Ontario, for allegedly causing equipment failure due to neglect by the employee.

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

On January 13, 1990, employee C. Shea was assessed 25 demerits for equipment failure for which the Company related to the negligence of the employee.

On the date of January 13, 1990, after many hours worked by the employee, he was loading stove oil and the pump quit before he was done loading. Normally, when the pump stops, it automatically lifts itself. In this case, it did not, therefore pulled off.

The Union contends the issuing of 25 demerits is excessive and requested the demerits be expunged from his record.

The Company has rejected our request.

#### **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. Peterson	– Counsel, Toronto
R. McQueen	– Area Terminal Manager, Oakville
R. Seymour	– Operations Manager, Oakville
G. Lyster	– Director of Operations, Burnaby

And on behalf of the Union:

D. Wray	– Counsel, Toronto
J. J. Boyce	– General Chairman, Toronto
C. Shea	– Grievor

### **AWARD OF THE ARBITRATOR**

The material establishes to the satisfaction of the Arbitrator that the grievor did exhibit a degree of carelessness and negligence in the performance of his work. It is not disputed that he failed to remove the spigot of a fuel oil pump from the tank of his truck before pulling out. This resulted in costly damage to the pump's rack mechanism, which belonged to another company which is an important source of supply to the Employer. However the evidence falls short of establishing any deliberate disregard for the duty of care expected of the grievor, or even recklessness. Moreover, the Arbitrator cannot agree with Counsel for the Employer that the evidence discloses "gross" negligence. What occurred was an act of inadvertence deserving of some discipline.

In the circumstances, I consider the assessment of twenty-five demerits to be excessive. Mr. Shea is a long service employee whose record does not appear to include a pattern of similar accidents in the past. The Arbitrator deems it appropriate to exercise his discretion to substitute an assessment of ten demerits instead of the twenty-five which were issued against the grievor for this infraction. His record shall be revised accordingly.

June 15, 1990

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