CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2273

Heard at Montreal, Thursday, 16 July 1992

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Employee Michel Godon was dismissed on February 12, 1992, for the following alleged incidents: Failure to comply with the Company rule 10c of the Driver Manual regarding the payment of a C.O.D. of $29.53 collected on October 10, 1991; Being late to settle C.O.D.'s (re: September 10, September 30, November 12, November 14, 1991).

UNION'S STATEMENT OF ISSUE:

Concerning the alleged incident on October 10, 1991: Considering the circumstances of the incident, the Union submits that the employee's failure to settle the C.O.D. is a result of inadvertence, unintentional and humanly understandable.

Concerning the alleged incidents of being late to settle C.O.D.'s: The Union submits that the employee is not responsible for the alleged incidents.

Failure of the Company to comply with Article 6.2, 6.3, 6.4 of the Collective Agreement: The Union submits that the Company made several contraventions to the Collective Agreement for the following reasons: The interview on February 3, 1992, was conducted improperly, without sufficient notice and without the presence of a Union representative; The second interview on February 5, 1992, was conducted improperly and not within 14 days from the date the incidents became known to the Company; No fair and impartial investigation or interview was held in the circumstances of this case; Mr. Godon was held out of service for over a period of 10 days which is a violation of Article 6.4 of the Collective Agreement and there are no allegations of infractions of a serious nature.

The Union submits that the Company had no just cause to discipline Mr. Godon. Finally, in the event that the arbitrator concludes that there was some cause for discipline, it is submitted that the penalty was too severe.

The Union requests that the grievor's discharge be nullified and that Mr. Godon be reinstated in his job with full compensation, seniority and benefits.

The Company rejected the Union's request and that the discipline is well founded.

FOR THE UNION:

(SGD.) J. CRABB
EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

G. Gagnon	– Counsel, Montreal
P. D. MacLeod	– Director of Terminal, Toronto
A. Costa	– Director, Quality Improvement, Toronto

[TRANSLATION]

M. Mongrain – District Manager, Quebec
R. Paquin – Supervisor, Saint Jerome
R. Muir – Witness

And on behalf of the Union:
K. Cahill – Counsel, Montreal
J. Crabb – Executive Vice-President, Toronto
M. Gauthier – Division Vice-President, Montreal
M. Godon – Grievor

AWARD OF THE ARBITRATOR

The first question to be decided is whether the Company respected the provisions of article 6.2 of the collective agreement in its conduct of the grievor's investigation. That article reads as follows:

> **6.2** Whenever an employee is to be interviewed by the Company with respect to his work or his conduct in accordance with Article 6.1, an accredited union representative, selected by the employee, must be in attendance. Such interview must be held within 14 calendar days from the date the incident became known to the Company, unless mutually agreed. The employee to be interviewed shall be notified in writing, no less than 24 hours prior to the scheduled interview time. This notice shall include the reason the interview is being held. Nothing herein compels an employee to answer any question.

It appears from the evidence that during the month of January 1992, the grievor was absent from work because of an accident at work. It is common ground that, on October 10, 1991, he delivered a parcel with a C.O.D. charge of $29.53 to Mascouche, Quebec. Mr. Godon received the money from the customer but at the end of the day, when he turned in his receipts in the amount $320.65, his remittance did not include the $29.53 collected. In any event the collection of this sum was noted on his delivery sheets.

On December 19, 1991, the Company's accounting department noticed that he had not remitted the amount in question and requested an explanation from the regional supervisor. On January 6, the request for information was transmitted to Mr. Robert Paquin, the Company supervisor at St. Jerome. As the latter was in Trois Rivières, he asked Normand Morin, the lead hand at St. Jerome, to ask Mr. Godon for an explanation as to what had happened.

At this point there is a divergence in the evidence. It is agreed that Mr. Godon explained to Mr. Morin that it was a matter of simply forgetting. Mr. Godon states that he showed up at the office that same day to verify the transaction and, following instructions given to him by telephone by Mr. Paquin, remitted the sum in question the same day.

According to Mr. Godon, on January 6, he explained to Mr. Paquin by telephone that he had simply forgotten to hand in the money. Later, at the formal investigation held on February 5, 1992, he explained that he did not have his "yellow sheet" in his possession at the time of the transaction, that he had put the money which he collected with his own money and that, at the end of the day, calculated his remittances based on his yellow sheets rather than on his delivery slips.

Mr. Paquin does not categorically deny having spoken on the telephone to Mr. Godon on January 6, or having received an explanation through the intermediary of Mr. Morin. He states rather that he has no memory of having received any communication from either Mr. Godon or Mr. Morin. Counsel for the Company stresses that if Mr. Paquin had received the alleged explanation, he would have made a note of it. As Mr. Paquin did not make any note, the Company maintains that there was no explanation made to Mr. Paquin that day. Secondly, Counsel for the Company argues that article 6.2 of the collective agreement allows the Company to put off the formal investigation until the date of the return to work of the employee and that it was under no obligation to convene an investigation during the period of his absence for a compensable injury. Counsel for the Union maintains that, in the circumstances, it is reasonable to conclude that the Company was required to hold a formal investigation after January 6, given the general knowledge of Mr. Paquin and the fact that the employer did not hesitate to seek information from Mr. Godon during the period of his absence.

The first question to be decided is the state of the Company's knowledge on January 6, 1992. On this question, the Arbitrator prefers the version of Mr. Godon, given the doubts raised by Mr. Paquin who admits to having no precise memory of the events of January 6. It seems to me unlikely that Mr. Paquin, who had written in the service

note to Mr. Morin "... answer me, I do not want this to drag on." [translation], did not receive a response either from Mr. Godon or Mr. Morin shortly thereafter, if not that day. I am persuaded, on the balance of probabilities, that Mr. Paquin was fully aware of Mr. Godon's explanation on January 6, 1992, and at the latest by January 13, 1992, when he deposited at the bank the amount remitted by the grievor.

The Arbitrator accepts, in principle, the position of the employer to the effect that there could be circumstances which would justify the putting off of an investigation until the return to work of an absent employee, without violating article 6.2. It seems to me to be evident that, for example, if an employee is away on a trip for more than fourteen days, the reasonable application of the article would require a certain flexibility. However, each case must be judged on its own merits. One of the reasons for the time limits defined in article 6.2 is to allow the employee to be aware of an accusation made against him, within a time frame which gives him every possible change of remembering the events in question and of obtaining, without delay, the freshest evidence in support of his defense. It appears to the Arbitrator that the intention of the article would be undermined if, for example, the Company waited eight months for the return to work of an employee before advising him of a serious accusation being made against him. It is to avoid the possibility of such an abuse that the article imposes on the employer a strict obligation to hold an interview within fourteen days after it first becomes aware of the incident to be investigated.

In the instant case, the Arbitrator finds that the Company had sufficient knowledge of the incident of October 10 on January 6, or at the latest January 13, 1992, as the explanation of Mr. Godon had by then been communicated to it. As of that date, it was in possession of sufficient preliminary knowledge, as discussed in **CROA 1737**, and there was no practical reason which would impede the holding of an investigation within the fourteen days stipulated in article 6.2. In any event, if the employee had objected to attending an investigation prior to his return to work, the parties could then reach mutual agreement to put off the investigation to a later date. I doubt also that the employer conformed to the requirements of article 6 when it noted in its reasons for discharge "... other anomalies concerning your handling of C.O.D.'s." [translation] It is arguable that the Company was required, at a minimum, to accord the right of response and explanation to Mr. Godon concerning these four other incidents, identified in a letter attached to his letter of discharge.

For the foregoing reasons, the Arbitrator allows the grievance and declares that the Company did violate the terms of article 6.2 and that the discharge of Mr. Godon is a nullity, by virtue of article 6.3 of the collective agreement.

Furthermore, if it were necessary to rule on the merits of the grievance, the result would be the same concerning the question of just cause for the discharge of Mr. Godon. The evidence reveals that on four other occasions Mr. Godon forgot to remit his C.O.D.'s at the end of the day, although he voluntarily remitted the money, the next day in three cases and within a few days in the fourth. Even though the employer was unaware of these incidents, the evidence reveals a degree of negligence on the part of the grievor, rather than any practice of dishonesty. Given that he was never disciplined for such an infraction in his thirteen years of service, and that it was, based on all the evidence, a matter of a error made in good faith, a reprimand would have sufficed to communicate to him the importance of correcting his bad habits.

Mr. Godon shall therefore be reinstated into his employment, without loss of seniority and with compensation for loss of wages and benefits. As the action of the Company must be considered a nullity, all references to the incident of October 10, 1991, as well as the other incidents mentioned in the letter of February 12, 1992, are to be stricken from his record. Mr. Godon must, however, appreciate that this award does not in any way lessen the gravity of his error nor the possibility of serious consequences if his negligence is repeated in the future.

18 July 1992

(sgd) MICHEL G. PICHER
ARBITRATOR