# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 2334

Heard at Montreal, Tuesday, 9 March 1993

concerning

## CANPAR

and

## TRANSPORTATION COMMUNICATIONS UNION

## EX PARTE

**DISPUTE:**

The dismissal of CanPar employee D. Wilson for alleged infraction of April 30 and May 1, 1992.

**UNION'S STATEMENT OF ISSUE:**

Employee Wilson was advised by notice to attend an interview on May 12, 1992, at 5:00 p.m. for incorrect sheeting on Centre Summary of hours worked and non-attempts. The interview was held 8:00 a.m., May 13, 1992.

On or about May 20, 1992, employee Wilson received a further notice to attend an interview, which was eventually held May 25, 1992, with the addition of Off Delivery Route without authorization and included not only April 30, 1992, but also May 1, 1992.

The Union asserts the second interview which states on the Investigation Interview Report, "The purpose of re-opening this interview is to clarify the following questions," was not held in a timely fashion in accordance with Article 6.2 of the collective agreement.

The Union also asserts this was not a re-opening of the original interview to clarify questions asked or answers given as they were completely new questions.

The Union also asserts employee Wilson was dismissed based on the second interview.

The Union further asserts the dismissal of employee Wilson was not warranted and requested he be reinstated with full compensation, seniority and benefits.

The Company denied the Union's request.

**FOR THE UNION:**

**(SGD.) J. CRABB**
**EXECUTIVE VICE-PRESIDENT**

There appeared on behalf of the Company:

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| M. D. Failes | – Counsel, Toronto |
| P. D. MacLeod | – Director of Terminals, Toronto |
| P. Kitchener | – Driver Supervisor, Hamilton |

And on behalf of the Union:

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| H. Caley | – Counsel, Toronto |
| J. Crabb | – Executive Vice-President, Toronto |
| J. Marr | – Vice-President, Saint John |
| D. Neale | – Witness, Local Chairman, Hamilton |
| D. Wilson | – Grievor |

# AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that on April 30, 1992 the Company's supervisor, Mr. Patrick Kitchener, received a complaint by telephone advising him that the grievor's truck was regularly parked in front of an apartment building for long periods of time. The complaint was filed by the manager of the apartment building who advised that on the date in question the truck had been there for one and one-half hours. It is common ground that the apartment building is located outside the grievor's delivery area. At an interview conducted on May 12, 1992 the supervisor read to the grievor, in the presence of his Union representative, a report of the complaint received from the apartment manager. He also read to him the brief written report of Supervisor Ken Liddiard, to the effect that he had also observed the grievor's truck parked in front of the same apartment building between 2:04 and 3:35 p.m. on May 1, 1992, the day following the initial complaint. Mr. Wilson did not deny having been parked at that location on either date and offered no clear explanation of his actions.

A second interview was held with the grievor on May 25, 1992. The Union objected to that investigation as being out of time, and an improper attempt to reopen the earlier investigation. It is common ground that the grievor declined to answer any questions and the proceedings were aborted. Consequently, the Company elected to proceed on the basis of the information obtained in the interview of May 12, 1992.

The Union stresses that the notice of interview directed to the grievor with respect to the May 12 investigation referred only to the date of April 30th. On that basis it seeks to argue that the case against the grievor must be restricted to the events of that day. This, it submits, flows from the application of article 6.2 of the collective agreement which provides 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 that 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 questions.

In the Arbitrator's view the position of the Union is excessively technical. It is clear that the reason that the interview was held was the initial complaint with respect to the events of April 30th. That is clearly conveyed to the grievor in the notice which was sent to him. The fact that the first complaint occasioned an investigation on the next day by Supervisor Liddiard does not, in my view, prevent the Company from having raised his report during the course of the same interview. This is not a case of raising a different or unrelated infraction without fair notice. I am satisfied that the Company was not, in the circumstances, obligated to issue a separate notice with respect to the observations made on May 1, 1992 or to conduct a separate interview relating to that date. In the Arbitrator's view there was sufficient compliance with the requirements of article 6.2 of the collective agreement, and no prejudice to the grievor or violation of its terms is disclosed. The evidence establishes that on two consecutive days Mr. Wilson filled out his time sheet indicating having worked when, in fact, he was idle for extended periods, of up to one and one-half hours, in a location entirely outside his delivery area. I am satisfied that, standing alone, his actions in that regard constitute a violation of his obligation of trust to his employer, and the falsification of timekeeping documents deserving of serious discipline. Given the obvious loss of trust which flows form such an event, the Arbitrator cannot find that the Company did not have just cause to terminate his services.

For the foregoing reasons the grievance must be dismissed.

March 12, 1993

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