

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2335

Heard at Montreal, Tuesday, 9 March 1993

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The issuing of 30 demerits and dismissal of CanPar Employee C. Lévesque, Montreal, Quebec, for allegedly refusing a direct order.

UNION'S STATEMENT OF ISSUE:

Employee C. Lévesque was held out of service June 5, 1992 and dismissed on June 11, 1992 for accumulation of demerit marks. The Union asserts employee C. Lévesque did not refuse a direct order.

The Union also asserts employee Lévesque advised Supervisor Cantacessa while on his delivery route, he was returning to the terminal as he was sick.

The Union further asserts the Company has violated article 6.5 of the collective agreement.

The Union requested this employee be reinstated with full compensation, seniority and benefits.

The Company declined the Union's request.

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 Terminals, Toronto
R. Dupuis	– Regional Manager, Quebec
J. Cantacessa	– Delivery Supervisor, Montreal
J. Bordeleau	– Delivery Supervisor, Montreal

And on behalf of the Union:

K. Cahill	– Counsel, Montreal
J. Crabb	– Executive Vice-President, Toronto
M. Gauthier	– Vice-President, Montreal (Witness)
R. Pichette	– Vice-President, Montreal
C. Lévesque	– Grievor

AWARD OF THE ARBITRATOR

The Arbitrator is not of the view that the grievance is not arbitrable because of the Union's delay in filing the grievance. In the principle, the Employer could have raised the objection at the outset as the grievance was not filed within the time limits stipulated in clause 6.6 of the collective agreement. However, the Employer did not express any objections regarding the time limits in its response to the grievance dated September 15, 1992. The grievance therefore went to arbitration, without objection, with all that this implies concerning the effort and expense of preparation incurred by the Union. The violation of the time limits was raised for the first time before the Arbitrator. In the circumstances, I am bound to come to the conclusion that the right of the Company to plead the arbitrability of the grievance was abandoned a long time ago (*Canada Post Corporation* (1991) 22 L.A.C. (4th) 430 [T.A.B. Joliffe]; *Brown and Beatty*, *Canadian Labour Arbitration* 3rd ed., 2:3130).

As to the merits of the grievance, I consider that despite the seriousness of the acts committed by Mr. Lévesque when he refused to follow several directives from Mr. Cantecessa, we are dealing in fact, with one continuous event of confrontation and of a lack of judgement rather than deliberate insubordination on the part of the grievor. The Arbitrator therefore orders that he be reinstated into his employment, without loss of seniority and without compensation for wages and benefits lost. The period between his discharge and his return to work shall be noted as a suspension on his discipline record, which shall be adjusted to 45 demerit marks.

March 12, 1993

(Sgd.) MICHEL G. PICHER
ARBITRATOR