

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2336

Heard at Montreal, Tuesday, 9 March 1993

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The dismissal of CanPar employee J-C Gauthier, Montreal, Quebec, for loss of driving licence.

UNION'S STATEMENT OF ISSUE:

On June 19, 1992, employee J-C Gauthier was dismissed from CanPar for having lost his licence on January 27, 1992.

On June 1, 1992, employee J-C Gauthier met with Mr. R. Dupuis to advise him his doctor had cleared him to return to work, and to also advise him he lost his driving licence for being under the influence of alcohol.

Also on June 1, 1992 this employee requested a leave of absence which was refused, he was also refused positions which were bulletined part-time dockmen positions.

The Union asserts the Company has violated article 6 of the collective agreement.

The Union requested the grievor be reinstated with full compensation, seniority and benefits to a dockmen [sic].

The Company rejected the Union's request and contends that the dismissal is appropriate and that the Company followed article 8 of the collective agreement.

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

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
J-C Gauthier	– Grievor

AWARD OF THE ARBITRATOR

The Arbitrator must agree with the position of the Company concerning the arbitrability of the grievance. The time limits for the filing of the grievance was forty-two days, in accordance with the terms of article 6.6 of the collective agreement. In the instant case, the grievance was filed August 14, 1992, that is fifty-six days after the discharge of June 19, 1992. The Employer's objection to the late filing was clearly expressed by Mr. Paul MacLeod in his letter of September 10, 1992. There is therefore, no question of the Employer having abandoned its rights in this regard.

The collective agreement is clear. Article 9.3 stipulates that "When a grievance is not progressed by the Union within the prescribed time limits, it shall be considered as dropped." Moreover, the Arbitrator cannot accept the claim of the Union to the effect that certain discussions in May, June and July of 1992 between the Union's representative and the Company's officers on the subject of a large number of grievances represented an extension, by common accord, of the time limits for the case of Mr. Gauthier. In fact, prior to August 14, 1992 the Union had neither formulated nor filed a grievance on this matter.

For the foregoing reasons the grievance must be dismissed.

March 12, 1993

(Sgd.) MICHEL G. PICHER
ARBITRATOR