

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2360

Heard at Montreal, Thursday, 15 April 1993

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

On October 19, 1992 Windsor employee Ron Piper was dismissed from his employment with CanPar for the following alleged reasons: that he is unable to perform the duties of Driver Representative; that he has a permanent disability; and that he has failed to cooperate with the Workers' Compensation Board to rehabilitate himself.

UNION'S STATEMENT OF ISSUE:

The Company contends that, as a result of a workplace accident, the grievor is no longer capable of performing the duties of a Driver Representative as evidenced by his 10% permanent disability pension awarded by the WCB and as evidenced by the restrictions imposed by the WCB and his own physician. The Company also contends that the grievor has failed to cooperate and participate in WCB programs to rehabilitate himself and get back into the workforce in other employment.

The Union relies upon article 6 of the collective agreement in its entirety and submits the dismissal was not carried out in a proper fashion. Accordingly the discharge is null and void. Further, there was no just cause for dismissal.

The Union contends that the grievor was capable of performing the duties of a Driver Representative by October 14, 1992 and should have been reinstated into this position on this date. In the alternative, the Union submits that if the grievor was not capable of performing all of the duties of a Driver Representative the Company had an obligation under the Canada Human Rights Act to accommodate the grievor in this or another comparable position which the Company failed to do. In any event, the Union contends that the grievor had adequately established that he is capable of substantially performing the duties of his position.

The Union seeks reinstatement of the grievor with full seniority and with full compensation for the loss of wages and benefits from October 14, 1992 to date. In the alternative the Union seeks reinstatement on such terms as the Arbitrator sees fit.

The Company to date refused the Union's request.

FOR THE UNION:

(SGD.) J. CRABB

EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

M. D. Failes - Counsel, Toronto
P. D. MacLeod - Director of Terminal, Toronto

And on behalf of the Union:

D. Ellickson - Counsel, Toronto
J. Crabb - Executive Vice-President, Toronto

The matter was resolved between the parties at the hearing and therefore no award was issued.