

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2425

Heard in Montreal, Thursday, 11 November 1993

concerning

**CANADIAN PACIFIC EXPRESS & TRANSPORT**

and

**TRANSPORTATION COMMUNICATIONS UNION**

**EX PARTE**

### **DISPUTE:**

The assessment of twenty (20) demerits to CPET employee William Barker, Belleville, Ontario.

### **UNION'S STATEMENT OF ISSUE:**

Employee William Barker was advised in writing dated March 15, 1993, that twenty (20) demerits were being assessed for a vehicle accident on March 9, 1993.

The Union asserts that Mr. Barker and other employees did not notice the damage and further the unit in question had been verbally booked for repairs, but had not been taken out of service.

The Union requested the twenty (20) demerits be removed from his record.

The Company declined the Union's request.

### **FOR THE UNION:**

**(SGD.) D. J. DUNSTER**  
**EXECUTIVE VICE-PRESIDENT**

There appeared on behalf of the Company:

M. D. Failles – Counsel, Toronto  
B. F. Weinert – Director, Labour Relations, Toronto  
W. Sharpe – Terminal Manager, Belleville

And on behalf of the Union:

D. W. Ellickson – Counsel, Toronto  
D. J. Dunster – Executive Vice-President, Toronto  
G. Rendell – Divisional Vice-President, Ottawa  
A. Dubois – Divisional Vice-President, Quebec  
Wm. Barker – Grievor

### **AWARD OF THE ARBITRATOR**

The Arbitrator is satisfied, based on the evidence adduced, that the grievor did negligently cause damage to a trailer, as alleged by the Company, at its Pickering Terminal on or about March 9, 1993. The Arbitrator cannot accept the grievor's explanation that the damaging of the trailer was merely an error of judgment or the result of advice given to him by others at the time. While it does appear that the trailer hitched to his tractor unit was defective, he was aware of that fact at the time, and nevertheless attempted to hitch it to a second trailer in a manner that resulted in the damage which occurred.

While the outcome of this grievance is academic, for the purposes of the grievor's employment (*see CROA 2422*) the Arbitrator would have sustained the assessment of demerits against Mr. Barker for the incident in question. In my view, having regard to the grievor's unfortunate record, the assessment of twenty demerits would have been within the appropriate range of discipline. The grievance is, therefore, dismissed.

12 November 1993

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