

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2626

Heard in Calgary, Thursday, 11 May 1995

concerning

### INTERLINK FREIGHT SYSTEMS

and

### TRANSPORTATION COMMUNICATIONS UNION

#### EX PARTE

#### **DISPUTE:**

Port Coquitlam Employee G. Cannataro on June 1st, 1994 had an incident while operating a forklift, that resulted in a personal injury to a fellow employee.

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

The Company held G. Cannataro out of service on June 2nd, 3rd, 6th and 7th, 1994. On June 15th, 1994, they issued him 40 demerits, permanently restricted him from operating a forklift, refusing to compensate him for the four days held from service.

The Union argued throughout the grievance procedure that the discipline was excessive and unwarranted in view of G. Cannataro's record. The Union requested that he be reimbursed for the four days he was held from service, the lifetime suspension be reduced to 1 year and the demerits reduced to 20.

The Company agreed to pay compensation for the four days, offered to review the lifetime suspension at a later date, but declined to reduce the discipline to 20 demerits.

The Union accepted the compensation, and the suspension review. However, the Union believed that the 40 demerits was punitive and continue to argue that 20 demerits is more appropriate. Accordingly, the Union requested his discipline record be amended to reflect that view.

The Company declined the Union's request.

#### **FOR THE UNION:**

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

There appeared on behalf of the Company:

M. R. McKenzie – Manager, Employee Relations, Vancouver  
B. Weinert – Director, Employee Relations, Toronto  
W. B. Smith – Area Manager, Vancouver & Seattle, Vancouver

And on behalf of the Union:

D. E. Graham – Division Vice-President, Regina  
K. Greasley – Assistant Division Vice-President, Calgary

### **AWARD OF THE ARBITRATOR**

The evidence before the Arbitrator establishes that the grievor caused a serious and possibly permanent physical injury to another employee when he struck the employee as he drove a forklift. The only issue before the Arbitrator is whether the assessment of forty demerits, coupled with an indefinite or permanent suspension from the operating of a forklift is appropriate in the circumstances.

The evidence discloses that the grievor was involved in a prior accident in the operation of a forklift, which also resulted in serious injury to another employee. Although no discipline was assessed against the grievor in that instance, I am satisfied that the evidence in relation to it is admissible, as it goes to the issue of the appropriate measure of discipline, and the degree of previous warning given to the grievor in regards to the safe operation of his forklift. The evidence discloses that he was required to undergo retraining in the safe operation of the forklift after the first incident.

When regard is had to the totality of the evidence, the Arbitrator is satisfied that the Company was justified in assessing an indefinite suspension of the grievor in respect of the operation of a forklift. In that regard, unfortunately, the record speaks for itself. The Company was obliged to take appropriate action to give protection to other employees who might be at risk of injury from the operation of a forklift by the grievor, at least for the foreseeable future. Further, it may be noted that the Company's own position is that it reserves the right, in its own discretion, to review its decision in that regard in the future. Moreover, the removal of the grievor from forklift assignments does not impact his earnings.

Nor is the Arbitrator inclined to disturb the assessment of forty demerits against Mr. Cannataro by the Company. In a safety sensitive workplace, the security of employees and equipment is a legitimate and primary concern for the employer. When, as in the instant case, employee negligence occasions serious physical injuries, in the interest of deterrence the Company may resort to a level of discipline that is appropriate to enforce the seriousness of its concerns. Cardinal rules infractions in other areas of the transportation industry, including the railway industry, attract levels of discipline not out of keeping with the demerits assessed against the grievor.

For the above reasons the grievance is dismissed.

May 18, 1995

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