

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2627

Heard in Calgary, Thursday, 11 May 1995

concerning

### INTERLINK FREIGHT SYSTEMS

and

### TRANSPORTATION COMMUNICATIONS UNION

### EX PARTE

#### **DISPUTE:**

Port Coquitlam employee L. Grandinetti issued thirty (30) demerits for allegedly failing to stop at a red light and driving 60-80 KPH in a 50 km zone.

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

The Company issued discipline on the basis that a member of the general public, a Mr. McMitchell, accused Mr. Grandinetti of driving through a red light on 152nd Avenue and was speeding through a school zone on September 12th, 1994.

Mr. Grandinetti agreed that he was in that general area and that time but denied he ran a red light. However, he did say that he had proceeded through an intersection on a yellow light, as the road was wet which prevented him from stopping on time.

Further, Mr. McMitchell's statement is inaccurate in at least two verifiable instances. First, Mr. Grandinetti was driving truck number 2261 and not 2661, and it is 152nd Street not 152 Avenue that passes by the school where Mr. Grandinetti was accused of travelling 60-80 km. In addition that not a restricted school zone with a reduced speed, but is a major thoroughfare.

The Company argues that because Mr. McMitchell drives an ambulance he is a credible witness, and makes that statement without proof or foundation or fact. Since Mr. Grandinetti denied the accusation and the Company have not proved beyond reasonable doubt that Mr. McMitchell's accusation was factual. The Union requested the thirty demerits issued to Mr. Grandinetti be removed from his employment record.

The Company declined the Union's request.

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

#### **(SGD.) D. E. GRAHAM**

**FOR: 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, Regina
- L. Grandinetti – Grievor

**AWARD OF THE ARBITRATOR**

On a review of the evidence the Arbitrator is satisfied that the allegation against Mr. Grandinetti is made out, in part. The Arbitrator finds, on the balance of probabilities, that the grievor did proceed through an intersection against a red light, as reported to the Company by another motorist. I am not persuaded, however, that the evidence sustains the further allegation that he travelled in excess of the speed limit in the vicinity of a school. The judgment of the motorist in respect of that transgression is, at best, highly impressionistic and appears to have been unassisted by any appropriate speed detection device. Bearing in mind that the Company retains the burden of proof in respect of all of the allegations, I cannot find that the overspeed on the part of the grievor has been established, on the balance of probabilities.

In the result, the Arbitrator is satisfied that a reduction of penalty is not inappropriate in the instant case. In light of the seriousness of the red light infraction, however, and the grievor's prior record, which involved two accidents in April and June of 1994, respectively, the Arbitrator is inclined to support a degree of discipline which is nevertheless substantial. In the result, the Arbitrator directs that twenty demerits be substituted for the thirty demerits assessed against the grievor.

May 18, 1995

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