

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE No. 2709

Heard in Montreal, Tuesday, March 12, 1996

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Dismissal of Conrad Yumang, a Granby employee, for having accumulated more than sixty (60) demerits.

EX PARTE STATEMENT OF ISSUE:

Mr. Yumang lost fifteen (15) demerits for the accident with a client on July 9th. The Union believes that 15 demerits is a severe action.

Subsequently, Mr. Yumang lost five (5) demerits for unacceptable performance on August 94. The Union believes that a warning would have been acceptable.

In addition, Mr. Yumang lost four (4) demerits for inaccurate stop counts.

August 1995, Mr. Yumang lost sixty (60) demerits in one (1) day. The Union believes that this disciplinary action is of unacceptable severity.

The Union has requested the reinstatement of this employee with full seniority and compensation for salary and benefits lost.

The Company has refused the Union's request.

FOR THE UNION:

(SGD.) R. NADEAU

FOR: EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

M. D. Failes	– Counsel, Toronto
P. D. MacLeod	– Director, Terminals, Toronto
R. Dupuis	– Regional Manger, Montreal
M. Mongrain	– District Manager, Montreal
P. Rouleau	– P&D Supervisor, Montreal

And on behalf of the Union:

J. Drolet	– Counsel, Montreal
R. Nadeau	– Division Vice-President, Quebec
M. Lemieux	– Witness
D. E. Graham	– Division Vice-President, Saskatoon
C. Yumang	– Grievor

AWARD OF THE ARBITRATOR

The record discloses that in October of 1994 the grievor's record stood at fifty-nine demerits. Unfortunately, that record includes prior instances of discipline assessed against him for speeding violations, for falsely or incorrectly completing Company records and for having left his truck doors unlocked or unsecured during deliveries.

The evidence discloses that two supervisors observed the grievor during the course of his duties on July 25, 1995. According to their account, which the Arbitrator accepts as credible, the grievor drove at speeds in excess of 100 k.p.h. in a 50 k.p.h. zone. Further, during the course of deliveries, he left his vehicle's passenger door unlocked and open. That is plainly confirmed by the fact that one of the supervisors entered his vehicle while he was on a delivery at a store in St-Hyacinthe, and removed parcels intended for the next destination. When Mr. Yumang was subsequently confronted by the supervisors after the next stop, he denied that he had failed to lock the door, asserting that its locking mechanism was faulty. The evidence of the supervisors, however, is that they were able to lock the door with no difficulty. The evidence further discloses that the grievor recorded a number of false entries on his scanner, an action which would record stops or attempted deliveries which did not in fact occur, and which, undetected, would convey to his supervisors a heavier workload than in fact he had. In the result, the grievor was assessed ten demerits for speeding and twenty demerits for failing to secure his vehicle, on July 25th, as well as ten demerits for failing to deliver a parcel in Granby on July 27th, and twenty demerits for falsifying records with respect to non-existent pick ups and deliveries on July 25 and July 28, 1995.

On behalf of the grievor, Counsel for the Union argues that he has in fact been the subject of harassment at the hands of his two immediate supervisors. She relates that, although the prior discipline of the grievor is extensive, he did not file grievances in the past, as he considered that he was a good servant of the employer, and did not wish to be confrontational. She notes that prior to 1984 he was in a supervisory position, and that he has in the past, over his seventeen years of service with the Company, received written commendations from its chief executive officer. Moreover, at the arbitration the grievor expressly denied certain of the allegations against him, in particular the creating of false entries on his computer scanner, and leaving the door of his truck open, as alleged.

Unfortunately, there is a substantial body of evidence before the Arbitrator, which is objective in nature, which is negative to the grievor's case and which cannot be denied. Firstly, with respect to Mr. Yumang's prior record, from January of 1985 to the date of his discharge, he received discipline, in the form of verbal or written warnings and/or demerits and one suspension, on not less than sixty occasions. Most regrettably, the evidence before the Arbitrator confirms, in a manner that was not explained away by the grievor's own testimony at the arbitration hearing, that he did, on the balance of probabilities, make false entries on his delivery records, thereby inflating the appearance of the work which he did, on both July 25 and July 28, 1995.

When regard is had to the mitigating circumstances which might be taken into account in the instant case, the grievor's seventeen years of service must be given some value. Of equal weight, however, is the aggravating consideration of the apparent failure of the grievor to correct repeated infractions of the same kind, including speeding violations and the falsification of records, notwithstanding prior discipline in keeping with the fair application of progressive discipline for those same infractions on a number of occasions. Regrettably, the Arbitrator is compelled to conclude that the mitigating value of the length of the grievor's service is overshadowed by the recidivism which is evident in his lengthy record of discipline. Moreover, an examination of the whole of his employment record since 1985 would suggest that the frequency of discipline incurred by Mr. Yumang did not rise substantially in recent times. Over a ten year period the incidence of discipline noted on his record is regular and continuous. As an employee with fifty-nine demerits against his record, Mr. Yumang knew, or reasonably should have known, that he was in an extremely precarious position. Notwithstanding that reality, he can provide no good or credible explanation for the falsification of his work records, an undeniable fact objectively established on the documentation placed in evidence before the Arbitrator. Certain of the entries which he made are either for non-existent customers, or, in one case, for a customer in another city.

It is trite to say that a certain degree of trust is essential to the employment relationship, particularly when the work in question is carried out in a largely unsupervised setting. In the instant case the Arbitrator is compelled to conclude that the grievor did falsify records with respect to his own workload with a view to deceiving the Company. For that alone, he was deserving of discipline which would have placed him in a dismissable position. I am also satisfied, on the balance of probabilities, that he violated the posted speed limit and failed to properly secure his vehicle on July 25, 1995. All of these infractions were deserving of discipline, within the ranges applied by the

Company. Regard being had to Mr. Yumang's prior record, the Arbitrator does not consider that this is an appropriate case for a substitution of penalty.

For the foregoing reasons the grievance must be dismissed.

15 March 1996

(signed) MICHEL G. PICHER
ARBITRATOR