

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2738

Heard in Calgary, Wednesday, 15 May 1996

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Burnaby employee A. Kane was assessed 15 demerits for a motor vehicle accident that occurred December 29th, 1995.

JOINT STATEMENT OF ISSUE:

There is no dispute that as a result of the accident CanPar unit #877219 suffered some damage. However, accidents do occur and are part of the trucking business and both the Union and the Company must strive to eliminate all types of accidents.

The Union believes that in this instance Mr. Kane was exercising caution and following Company procedures. He had applied the park brake but it did not hold. That allowed the unit to move, striking a stationary object.

The Union contends that on returning to the terminal Mr. Kane asked Supervisor Dobson to accompany him and inspect the truck. He showed Mr. Dobson that the truck pulled ahead on a level surface with the brake applied. He also showed Mr. Dobson that there was no adjustment left on the park brake. He offered to take it out on an incline to show him that the park brakes would not hold on a downhill grade but Mr. Dobson declined.

The Union contends that the brakes were inspected on January 2, 1996. The rear wheels were removed and brake cables adjusted (shortened) 3 or 4 inches on each wheel.

The Union believes the cables were stretched from continual application as a result the park brake did not hold. Mr. Kane states he was adjusted the brake in the cab but was unaware there was no adjustment remaining.

The Union requested the discipline issued be reduced to a written warning. This being an educational remedy rather than a punitive remedy.

The Company denied our request.

FOR THE UNION:

(SGD.) D. E. GRAHAM
DIVISION VICE-PRESIDENT

FOR THE COMPANY:

(sgd.) P. D. MACLEOD
DIRECTOR, TERMINALS

There appeared on behalf of the Company:

P. D. MacLeod – Director, Terminals, Toronto
R. Downs – Regional Sales Manager, Western Canada

And on behalf of the Union:

D. E. Graham – Assistant Division Vice-President, Regina
A. Kane – Grievor

AWARD OF THE ARBITRATOR

Upon a review of the evidence, including the accident report filed by the grievor and video tape evidence of a re-enactment of the incident presented by the Company, the Arbitrator is compelled to the conclusion that the grievor has not been candid with his employer in relating the specifics of the accident in which he was involved. While the grievor submits that the parking brake of his van failed when he was attempting to back it in a reverse movement, causing the van to roll some three to four feet into a stump, the evidence presented by the Company casts substantial doubt on that explanation. Firstly, the location in which the accident occurred provided ample space for the grievor to remove his vehicle from the customer's loading bay without any need to do other than simply drive forward and turn into the adjacent roadway. It is less than clear why the grievor would, in any event, have been in a position to reverse the direction of his van. Secondly, the \$2,200.00 in damage done to the front of Mr. Kane's van is entirely inconsistent with its having rolled a mere distance of three to four feet into the stump. That is convincingly proved by the Company's reenactment of that incident with an actual van. No substantial damage occurred when another van was rolled the same distance into the stump in question. On the balance of probabilities, the Arbitrator is compelled to the conclusion that the grievor's van rolled a considerably greater distance than the grievor would suggest. That is further confirmed by the fairly extensive injuries which he suffered on that occasion, causing his removal from work for a brief period. Finally, a test of the grievor's parking brake conducted immediately after the incident confirmed that it did hold, casting further doubt on the explanation given by Mr. Kane.

In the result, the Arbitrator is satisfied that the Company has satisfied the burden of proof which is upon it. The evidence suggests, on the balance of probabilities, that the explanation given by the grievor with respect to the events causing damage to his van on December 29, 1995 are not as he has related. All of the objective evidence before the Arbitrator points to serious error or negligence on the part of Mr. Kane in the operation of his vehicle.

In the Arbitrator's view the assessment of fifteen demerits is within the appropriate range of discipline for the incident in question. For these reasons the grievance must be dismissed.

May 17, 1996

(signed) MICHEL G. PICHER
ARBITRATOR