CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2748

Heard in Montreal, Tuesday, 11 June 1996

concerning

INTERLINK FREIGHT SYSTEMS INC.

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Dismissal of Mr. André Verville, a Drummondville employee, for having accumulated more than 60 demerits.

UNION'S STATEMENT OF ISSUE:

Mr. Verville lost 10 demerits in a minor accident (mail box) on June 3, 1994. The Union believes that 10 demerits is a severe action.

The Union reviewed Mr. A. Verville's discipline record and noted that he was not credited with the five (5) merits for accumulated six (6) months' accident free period, from June 3, 1994 to January 26, 1995.

On November 1, 1995 Mr. Verville was involved in damage to a dangerous goods shipment.

The Union filed a grievance at step two (2), stating the discipline was excessive.

The Union requested that Mr. Verville be reinstated, without loss of seniority and compensated for all wages and benefits lost.

The Company declined the Union's request.

FOR THE UNION:

(SGD.) R. NADEAU
DIVISION VICE-PRESIDENT

There appeared on behalf of the Company:
  R. Skelly   – Counsel, Montreal
  B. F. Weinert   – Director, Employee Relations, Toronto
  M. Mousseau   – Regional Manager, Montreal
  J. J. Peloquin   – Terminal Manager, Drummondville
  P. Marquette   – Dock Manager, Montreal
  D. Rodriguez   – Operations Representative, ChemTech Environment Inc., Quebec

And on behalf of the Union:
  K. Cahill   – Counsel, Montreal
  R. Nadeau   – Division Vice-President, Quebec
  A. Verville   – Grievor

[TRANSLATION]

AWARD OF THE ARBITRATOR
(translation)

The Arbitrator judges that the evidence demonstrates a serious error of judgement on the part of the grievor. But in the circumstances, certain mitigating factors justify a reduction in the disciplinary penalty.

It is not disputed that Mr. Verville had to call his dispatcher or his supervisor to ask him to advise the local police that he had noticed that there had been a spillage of dangerous chemical products in the van of his truck at Sherbrooke, at about 2:00 p.m., November 1, 1995. However, the evidence of the grievor establishes that what he had then seen was that the package in the carton which contained the product in question had been loaded upside down, and that the only visible damage was that a part of the carton was wet. Furthermore, the package in question was not visible when the grievor had inspected his van in the morning, due to an error in the method of loading done by another employee. As there was no odour, nor significant damage, Mr. Verville contented himself by replacing the package in a good position, before continuing on his delivery route.

Unfortunately, a chemical container in the package was broken, which, as a result, allowed the chemical to leak again more seriously, damaging all of the contents of his truck. It was only when the more serious damage, accompanied by a strong ammonia odour, became obvious later that Mr. Verville finally followed the proper procedure and advised the Company.

The grievor's record reveals a series of relatively minor disciplinary measures. However, the accumulation of demerits placed him in the precarious position of having fifty-five demerits on his record at the time of the events of November 1, 1995. Therefore, he ought to have known, and had been advised of the fact, that a disciplinary infraction would result in serious consequences concerning his employment.

Given all of the facts, the Arbitrator is persuaded that a serious measure of discipline, short of discharge, would be sufficient to make the grievor aware of the importance of respecting the established procedures for the transport of dangerous good in the future. Therefore, I deem that a long period of suspension would be appropriate.

For these reasons the Arbitrator orders that the grievor be reinstated into his employment, without loss of seniority and without compensation for wages and benefits lost, with his discipline record to stand at fifty-five.

June 15, 1996
                                                (signed) MICHEL G. PICHER
                                                                    ARBITRATOR