

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2883

Heard in Montreal, September 1997

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Appeal of 25 demerit marks assessed to the record of R. Perras, for a vehicle accident, resulting in his discharge for accumulation of demerit marks.

EX PARTE STATEMENT OF ISSUE:

Mr. Réal Perras was interviewed concerning a vehicle accident that occurred on or about May 30, 1997.

During the interview the grievor proved without any doubt that he drove safely, he also stated that the signal system announcing the work in front was not functioning properly.

Following the interview, Mr. Perras was assessed twenty-five (25) demerits and subsequently terminated for accumulation of demerits due to this assessment.

The Union contends that Mr. Perras was not responsible for the accident and the assessment was unwarranted.

The Union requested the removal of the demerits and the return of Mr. Perras to active service with full compensation for loss of remuneration and benefits plus interest while held out of service.

The Company declined the Union's request.

FOR THE UNION:

(SGD.) R. NADEAU
DIVISION VICE-PRESIDENT

There appeared on behalf of the Company:

C. Beaulieu	– Counsel, Montreal
P. D. MacLeod	– Vice-President, Operations, Toronto
R. Dupuis	– Regional Manager, Montreal
M. Boucher	– Witness
L. Bordeur	– Witness
J. Robert	– Witness

And on behalf of the Union Brotherhood:

K. Cahill	– Counsel, Montreal
R. Nadeau	– Division Vice-President, Quebec
J. Scrivo	– Witness
R. Perras	– Grievor

AWARD OF THE ARBITRATOR

The evidence demonstrates, without contradiction, that the truck driven by the grievor struck a *Ministère des transports du Québec* truck on Highway 20 West, near Rivière Beaudette, at about 2:07 a.m., May 30, 1997. The collision propelled the Ministry truck all the way into a field, having crossed the westbound lanes, the barrier and eastbound lanes of the highway. The Ministry truck suffered major damage, and its driver, Mr. Pierre Therrien, was seriously injured.

The Ministry truck was the third from the front of a caravan of six trucks which were occupied in painting the right hand line which separated the right of way and the shoulder of the highway. It is not disputed that with the exception of the two lead trucks, the Ministry vehicles were going about 28 KM/H, with a distance of from 300 to 500 metres between them. They were all equipped with flashing lights as well as large panels with yellow arrows which indicated to vehicles which passed to take the left lane. Effectively, the placement of the trucks which followed the marking truck were placed to force the passing vehicles to move to the left. The evidence establishes that the Ministry truck which was hit had the task of riding the shoulder line, placing itself three quarters in the driving lane and one quarter on the shoulder.

The grievor relates that he reduced his speed from 90 KM/H à 80 KM/H when approaching the Ministry trucks. He claims to not have seen the illuminated arrows on the panels of the first three trucks which he saw, the fourth of which was the truck which was hit. According to his evidence, the truck in question suddenly veered in front of him, passing out of the right lane, and that he could not avoid hitting him.

The Ministry employees, two of whom testified at the hearing, gave a different version of the events. Mr. Marcel Boucher, who was the driver of the Ministry truck directly behind the truck which was struck, relates that Mr. Perras' truck passed dangerously close to the side of his truck, at distance which he estimated to be between 30 and 40 centimetres from his left mirror. He immediately communicated by radio to warn the next truck, driven by Mr. Therrien, of the dangerous approach of the truck driven by the grievor. Mr. Luc Brodeur, who drove the second truck in the caravan, said he clearly heard the warning of Mr. Boucher, and that he saw the collision of the two vehicles in his mirrors. The two Ministry employees relate that, in accordance with normal procedure, all the trucks in the caravan had large illuminated arrows on their panels, clearly pointing to the left.

In light of all of the evidence, the Arbitrator finds improbable the version of events related by Mr. Perras. By contrast, I find credible the evidence of Mr Boucher to the effect that the grievor passed dangerously close to his vehicle, to the point of provoking a warning to the other drivers of the actions of the grievor. Equally, I find less than probable the claim of Mr. Perras to the effect that all the trucks in the caravan were driving with the yellow arrows not illuminated. Furthermore, the photos of the accident site reveal, by way of tire marks, that the truck of Mr. Perras was definitely in the right half of the right hand lane at the moment of impact with the Ministry truck. If this truck was driving three quarters in that lane, as he was required to do, a collision would be inevitable. Furthermore, that analysis is consistent with the fact that the point of impact between the two vehicles appears to have been the right side of the front bumper of Mr. Perras' truck and the left rear corner of the Ministry truck.

The Arbitrator must come to the conclusion that the grievor was well and truly responsible for the accident. It is clear that if Mr. Perras had kept to the left, as he was clearly indicated to do by the illuminated arrows, he would not have struck the Ministry truck. As the discipline file of the grievor was already at the level of 59 demerit marks, in spite of his years of service, the Arbitrator cannot see how a reduction in penalty can be justified. For these reasons the grievance is dismissed.

September 15, 1997

(signed) MICHEL G. PICHER
ARBITRATOR