

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2970

Heard in Montreal, Tuesday, 8 September 1998

concerning

**CANPAR**

and

**TRANSPORTATION COMMUNICATIONS UNION**

### **DISPUTE:**

CanPar employee Barry Emsley, being assessed five (5) demerits for allegedly not following Company policy in that Mr. Emsley did not call in to dispatch prior to returning to the terminal for authorization to bring back “non-attempts” (non-delivered freight) on June 18, 1997.

### **JOINT STATEMENT OF ISSUE:**

The Company contends that Mr. Emsley did not follow the rules pertaining to “non-attempts” on June 18, 1997 when he did not call in to dispatch to inform the Company that he could not deliver all his freight and thus did not follow Company policy.

The Union contends that Mr. Emsley did follow Company policy. The Union further contends that it was the Company which failed to live up to the policy guidelines by not properly balancing Mr. Emsley’s dispatch equally or fairly to that of other employees for the day.

The Union requested the Company to remove the demerits from Mr. Emsley’s record.

The Company denied the Union’s request.

The Union’s position remains the same.

### **FOR THE UNION:**

**(SGD.) D. NEALE**  
DIVISION VICE-PRESIDENT

### **FOR THE COMPANY:**

**(SGD.) P. D. MACLEOD**  
VICE-PRESIDENT, OPERATIONS

There appeared on behalf of the Company:

P. D. MacLeod – Vice-President, Operations, Toronto  
R. Dupuis – Regional Director, Montreal

And on behalf of the Union:

D. Dunster – Executive Vice-President, Ottawa  
D. Neale – Division Vice-President, Hamilton

### **AWARD OF THE ARBITRATOR**

The material before the Arbitrator establishes, beyond any substantial controversy, that the grievor had a number of non-attempts in respect of parcels which he was to deliver on June 18, 1997. While it appears that the grievor and his supervisor had some dispute in the morning as to whether his truck was overloaded, the fact remains that Mr. Emsley made no attempt whatsoever to advise the Company, during the course of the day, that he would obviously be unable to deliver all of the parcels on his truck. Rather, he simply returned to the terminal at the end of the day and left the undelivered freight on his truck, without notifying anyone.

The grievor's actions in that regard are plainly contrary to well-established policy. Mr. Emsley knows, or reasonably should know if he intends to continue working with the Company, that it is the drivers who are the first line of alert to the Company with respect to the possibility of freight going undelivered. It is incumbent upon the driver to notify management, either during the course of the working day or, at a minimum, upon returning to the terminal, of any undelivered freight.

In the instant case the grievor paid no heed to his obligation to protect the Company against the non-delivery of parcels. In addition, it appears that his own error when counting the number of delivery stops he would have at the start of the day led, at least in part, to his inability to deliver all of the freight which was on his truck. In the circumstances the Arbitrator can see no reasonable basis to sustain the grievance or reduce the assessment of demerits awarded against Mr. Emsley. The grievance is therefore dismissed.

September 11, 1998

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