

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2979

Heard in Montreal, Tuesday, 13 October 1998

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

On October 30, 1997, Mr. Frank Scrivo was advised to attend an interview to be held on October 31, 1997 at 6:30 p.m. and related to an alleged work stoppage on the same day.

On October 31, 1997 at 8:45 a.m. Mr. Scrivo submitted a letter to Mr. Dean Cardi in which he was asking to postpone to another day the interview for family reasons.

On October 31, 1997 at approximately 5:30 p.m., Mr. Scrivo reiterated to Mr. Dupuis his request to postpone the interview. At the end of the discussion, Mr. Dupuis told Mr. Scrivo that he was suspended.

Mr. Frank Scrivo has been suspended without pay from November 3, 1997 until November 7, 1997 inclusively. The Company refused to provide in writing the reasons for the suspension. The Company also imposed 20 demerits to Mr. Scrivo for the alleged threats against the management on October 31, 1979.

On November 7, 1997 Mr. Scrivo attended an interview for the alleged threats against the management on October 31, 1997 and another interview on November 11, 1997 for failure to report for an interview on October 31, 1997.

EX PARTE STATEMENT OF ISSUE:

The 20 demerits assessed are unjustified, extreme and without merit. The suspension was in violation of the collective agreement, unwarranted, unjust and excessive.

The Union requests that the 20 demerits be removed from Mr. Scrivo's file and the 5 day suspension be cancelled and that Mr. Scrivo be fully reimbursed with interest.

The Company declines the Union's request.

FOR THE UNION:

(SGD.) R. NADEAU
DIVISION VICE-PRESIDENT

There appeared on behalf of the Company:

P. D. MacLeod	– Vice-President, Operations, Toronto
R. Dupuis	– Terminal Manager, Montreal
D. Cardi	– P&D Manager, Montreal

And on behalf of the Union:

D. J. Dunster	– Executive Vice-President, Ottawa
R. Nadeau	– District Representative, Quebec
R. Pichette	– Local Protective Chairman, Montreal

S. Wheatley
F. Scrivo

– Financial Secretary/Treasurer, Montreal
– Grievor

AWARD OF THE ARBITRATOR

The grievor was held out of service for five days, and assessed twenty demerits, by reason of his alleged insubordination toward a supervisor. In this matter of discipline, the Company bears the burden of proof. Having reviewed the entirety of the evidence, the Arbitrator is in substantial doubt that that burden has been discharged.

It is common ground that on or about October 30, 1997 a brief work stoppage occurred at the Company's Montreal terminal, a matter dealt with more extensively within **CROA 2937** and **2938**. It is common ground that the grievor, a local officer of the Union, had no involvement in the work stoppage. Indeed, it appears that the bulk of the events in question took place prior to his arrival at work. Nevertheless, and in the Arbitrator's view quite understandably, the Company sought to conduct disciplinary interviews of all of the union's local officers to determine whether they had any involvement in the planning and execution of the temporary work stoppage. On that basis Mr. Scrivo was requested to attend an interview at the end of a working day, at approximately 5:30 p.m. on October 31, 1997.

The material before the Arbitrator confirms that Mr. Scrivo gave his immediate supervisor, Mr. Dean Cardi, a written request to have his interview rescheduled. The written request specifically cites the fact that Mr. Scrivo needed to be at home, as it was Halloween, and he had a requirement to be with his family. At the arbitration hearing he related that that evening his twelve year old daughter would be alone, as his wife was required to work and his teenage son would be absent. In the circumstances, therefore, the grievor sought leave to reschedule the investigation.

Unfortunately, neither Mr. Cardi nor any other supervisor read his written request, which was clearly in accordance with article 6.1 of the collective agreement, which deals with disciplinary interviews and reads, in part:

In cases where the employee provides a reasonable excuse for his inability to attend the interview, the interview shall be rescheduled to be held on his return to work and time limits under article 6.2 shall be waived.

It is common ground that in the grievor's case his return to work was scheduled for the following Monday. Notwithstanding the clear provisions of article 6.1, and the fact that the grievor did file a written request, which in the Arbitrator's view was eminently reasonable, as a reason for his inability to attend the interview, Terminal Manager R. Dupuis failed to read his written request and refused to postpone the interview.

It is common ground that Mr. Dupuis' refusal was communicated to the grievor during a meeting involving a number of individuals, towards the end of the day on October 31, 1997. While versions of what transpired differ, I am satisfied, on the balance of probabilities, that the exchange between Mr. Dupuis and Mr. Scrivo was relatively heated, and that Mr. Dupuis communicated to Mr. Scrivo that if he failed to attend the interview he was suspended. While Mr. Dupuis' recollection was that he offered the grievor the alternative of an interview on the next day, which was Saturday and the grievor's day off, I am inclined to prefer the evidence of the Union's witnesses who denied that any such offer was made. In fairness to Mr. Dupuis, he was then faced with a relatively serious situation, requiring the disciplinary examination of in excess of forty employees. Rightly or wrongly, he felt compelled to apply a strict rule which would allow of no exceptions to the completion of the interviews as scheduled. In the circumstances, Mr. Scrivo refused to remain at work for the interview at the end of the day on the 31st of October. He was subsequently held out of service for five days and ultimately assessed twenty demerits, as well as the five day suspension, for insubordination. The position of the Company is that he was not disciplined for failing to attend the interview as scheduled.

On the facts before me I cannot sustain the Company's position with respect to the assessment of any discipline against Mr. Scrivo. At a minimum, it was the contractual obligation of both Mr. Cardi and Mr. Dupuis to read and consider Mr. Scrivo's request for a postponement of his investigation. If the request contained reasonable grounds, as I am satisfied it did, it was the grievor's right to have the investigation rescheduled for his return to work, which was the following Monday. That is clearly contemplated by article 6.1 of the collective agreement.

There is no doubt that Mr. Scrivo was angry. However, given that his supervisors neither read his written request for a postponement of the interview, advanced for important family reasons, nor dealt with him properly in respect of his right to a postponement to the following Monday, I am compelled to conclude that there was, at a

minimum, a degree of provocation of the grievor which contributed to the tone of voice he used with Mr. Dupuis during the course of their verbal exchange. Further, while the Arbitrator appreciates that Mr. Dupuis was himself under some pressure at the time, Mr. Scrivo does bear certain responsibilities as a union officer, and a degree of latitude in his communications with management is reasonably to be expected, to the extent that it might deal with contentious matters involving rights under the collective agreement.

For all of the foregoing reasons the grievance is allowed. The Arbitrator finds and declares that the Company did not have just cause to assess any discipline against Mr. Scrivo in the circumstances reviewed. The Company is directed to compensate the grievor for all wages and benefits lost, and to strike the twenty demerits from his record.

October 19, 1998

(signed) MICHEL G. PICHER
ARBITRATOR