

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3121

Heard in Montreal, Thursday, 15 June 2000

concerning

CANPAR

and

**TRANSPORTATION COMMUNICATIONS
LOCAL 1976 STEELWORKERS**

DISPUTE:

The Union on behalf of Mr. Don Burke grieves that 20 demerits were assessed to his employment record for the offence of giving a letter to his immediate supervisor.

JOINT STATEMENT OF ISSUE:

On September 29, 1999, Mr. Don Burke wrote a letter to his immediate supervisor.

The Union contends that the letter was written out of frustration.

In the letter Mr. Burke is critical of his supervisor's skills as a supervisor, the indifference of the supervisor towards him on his ideas put forth to her, the way the employees are treated at the terminal and on the supervisor's handling of a specific incident at Casco, on or about September 24, 1999.

The Union does not believe it inappropriate to write a letter to one's supervisor stating one's feelings.

The supervisor passed the letter on to her superiors, who in turn held an interview on the matter.

The Union contends that a fair and impartial hearing was not held by the Company during the interview process.

The Company denies this.

The Union requested the Company to remove the 20 demerits from Mr. Burke's file.

The Company denied out request.

FOR THE UNION:

(SGD.) D. NEALE
INTERIM PRESIDENT – LOCAL 1976

FOR THE COMPANY:

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

There appeared on behalf of the Company:

P. D. MacLeod – Vice-President, Operations, Toronto

And on behalf of the Union:

D. Neale – Interim President, Hamilton

AWARD OF THE ARBITRATOR

The material before the Arbitrator reveals, beyond controversy, that the grievor did write an intemperate and ill-advised letter to his supervisor, questioning her competence and management skills in highly unflattering terms. Also, it does not appear disputed that he communicated the content of his letter to other employees. There can be little doubt that his actions were improper, constituting insubordination deserving of some degree of discipline. The evidence also discloses, however, that the grievor did apologize verbally to the supervisor shortly after delivering the letter to her, and before he became aware that it might become the subject of an investigation on the part of the Company.

While the Union questions the regularity of the investigation, I am satisfied that there is nothing in the record to suggest that the standard of a fair and impartial investigation was violated, assuming without finding that the collective agreement demands that standard, a proposition which is doubtful on the language of article 6 of the collective agreement, taken as a whole. As a further mitigating factor the grievor is an employee of relatively long service, with a seniority date of November, 1983, who has previously performed the responsibilities of a lead hand. His discipline stood at five demerits at the time of the incident in question. In all of the circumstances I am satisfied that the assessment of ten demerits would be sufficient to convey to Mr. Burke the seriousness of his error, and be sufficiently corrective of his behaviour in the future.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor's record be adjusted to reflect the assessment of ten demerits for the insubordinate content of his letter of September 29, 1999.

June 16, 2000

(signed) MICHEL G. PICHER
ARBITRATOR