

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3146

Heard in Montreal, Wednesday, 11 October 2000

concerning

CANPAR

and

**TRANSPORTATION COMMUNICATIONS UNION
LOCAL 1976 STEELWORKERS**

DISPUTE:

Mr. S. Patterson (Ottawa) was issued 15 demerits for allegedly leaving his vehicle unsecured on March 27, 2000.

JOINT STATEMENT OF ISSUE:

On March 27, 2000 a spot check was conducted during the course of Mr. Patterson's deliveries and his vehicle was found to be unsecured. He was subsequently issued 15 demerits for leaving his vehicle unsecured in violation of Company policy.

The Union argued that he was in sight of his vehicle and that he had in fact complied with Company policy and requested that the demerits be removed from his record as they were unjustified, unwarranted and excessive.

The Company denied the Union's request.

FOR THE UNION:

(SGD.) D. J. DUNSTER
STAFF REPRESENTATIVE

FOR THE COMPANY:

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

There appeared on behalf of the Company:

P. D. MacLeod	– Vice-President, Operations, Mississauga
R. Dupuis	– Regional Manager – Quebec, Lachine
R. Clark	– Supervisor, Ottawa

And on behalf of the Union:

D. J. Dunster	– Staff Representative, Ottawa
J. Schock	– LPC
S. Patterson	– Grievor

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied, on the basis of the evidence adduced, including the testimony of Ottawa Terminal Supervisor Richard Clark, that the grievor did leave his vehicle unsecured during a delivery to the Children's Hospital of Eastern Ontario in Ottawa on March 22, 2000. Mr. Clark's evidence confirms, to the satisfaction of the Arbitrator, that the grievor exited his van and entered the dock area of the hospital while both the bulk head door and cab door of his truck were left open. While the Union's representative submits that the fact that the van remained visible to the grievor for the better part of the time of his movement, there are obvious concerns which nevertheless arise. Firstly, it is admitted that there were portions of time, however brief, when the grievor was moving behind walls which blocked his view of his van as he proceeded to the dock area. It also appears likely that if the grievor had been told to proceed to the office, which is situated beyond the dock, to make the delivery, he would clearly have abandoned any sight line to his vehicle. Quite apart from the issue of the sight line, however, it would appear that the grievor would have been powerless to prevent pilferage from his van by a determined thief, given its vulnerable state and his distance from it.

It may be noted that the Company's supervisor conceded that no discipline would have issued had the bulkhead door of the grievor's van been locked, so as to secure the cargo section of his truck, even if the driver's cab had been left open. It appears that that is permissible practice within the Ottawa Terminal. As noted above, I am satisfied that in the instant case it was the more egregious failure to secure the bulkhead door as well as the side door to the cab which rendered the grievor liable to discipline.

The material discloses that the grievor has been disciplined on a prior occasion for the same offence. In that circumstance the Arbitrator is not persuaded that the assessment of fifteen demerits should be reduced, and that it did fall within the appropriate range of discipline. For all of these reasons the grievance must be dismissed.

October 13, 2000

(signed) MICHEL G. PICHER
ARBITRATOR