

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3172

Heard in Calgary, Thursday, November 16, 2000

Concerning

CANPAR

And

**UNITED STEELWORKERS OF AMERICA
TRANSPORTATION COMMUNICATIONS LOCAL 1976**

DISPUTE:

Twenty (20) demerits issued to Colin Primeau (Calgary) for the events surrounding the breakdown of Unit 877110 on June 12, 2000.

JOINT STATEMENT OF ISSUE:

The Union filed a grievance regarding the above-mentioned matter on July 6, 2000. The Company denied the Union's request to settle the matter on July 13, 2000. To date the Company has denied the Union's request to settle the matter.

The Union contends that the discipline issued is unwarranted and violates article 6.1 of the collective agreement. The Union submits that the grievor is merely a victim of circumstance and is not responsible for causing the vehicle damage.

The Company contends that the grievor is responsible for the damage, and that they have not violated the collective agreement.

FOR THE UNION:

(SGD.) A. KANE
GOVERNING BOARD REPRESENTATIVE

FOR THE COMPANY:

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

Appearing on behalf of the Company:

P. D. MacLeod – Vice-President, Operations, Toronto
H. Greenfield – District Manager - Alberta

Appearing on behalf of the Union:

A. Kane – Governing Board Representative, Vancouver
B. Plante – Local Chairman, Calgary
C. Primeau – Grievor

AWARD OF THE ARBITRATOR

The grievor relates that as he was departing the delivery dock of a customer he heard a noise from the rear of his step-van. According to his account he thought that the emergency brake cable may have broken, and he then attempted to move the truck both forwards and backwards a number of times, to see whether he might determine the nature of the problem. It is common ground that the truck then became immobilized, and that he called his supervisor to report the incident.

It is not disputed that the subsequent examination of the vehicle disclosed a break, apparently caused by twisting, in the axle shaft of the truck, some three inches from the differential. The attempts to move the vehicle caused the broken piece of shaft to severely damage to workings of the differential itself. Opinions which the Company obtained from two vehicle repair facilities suggested that the break in the axle shaft was not a result of any defect in the part, but was in all likelihood occasioned by rapid spinning of the wheels, as in a "drag race" start. On that basis the employer concluded that the grievor was responsible for the damage, and assessed twenty demerits against his disciplinary record.

The Company bears the burden of proof in this matter. The evidence upon which it relied is entirely circumstantial. It could produce no direct witness to the events in question. The grievor, an employee of long-standing with an extremely positive driving record, was present at the hearing, however. His is the only direct account of what occurred. On balance, the Arbitrator has difficulty fully discounting Mr. Primeau's statement, and concluding that the theory advanced by the Company is to be preferred, on the balance of probabilities.

The vehicle which the grievor was operating was not his own regular step-van. It was a spare vehicle, with extensive mileage, used by a great number of drivers as a replacement when their van was being repaired. The circumstantial evidence upon which the Company relies suggests a theory that is, in the Arbitrator's view, no more plausible or likely than other alternative possibilities, such as the inadvertent spinning of the rear wheels of the vehicle on gravel or oil, as it departed the dock, perhaps without the knowledge of the grievor. In such a case, given what I judge to be the credible testimony of Mr. Primeau, the doubt must be resolved in favour of the party which does not bear the burden of proof, and I must conclude that the onus upon the Company has not been discharged.

For all of the foregoing reasons the grievance must be allowed. The Arbitrator directs that the twenty demerits assessed against Mr. Primeau be removed from his record forthwith.

November 20, 2000

(signed) MICHEL G. PICHER
ARBITRATOR