

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3185

Heard in Montreal, Thursday, 15 February 2001

Concerning

CANPAR

and

**UNITED STEELWORKERS OF AMERICA, LOCAL 1976
(TRANSPORTATION COMMUNICATIONS UNION)**

DISPUTE:

Ottawa employee P. Riley was terminated on October 25, 2000 for accumulation of demerits, his total on that date being 104. The culminating incident was the assessment of 50 demerits for having an alleged unsecured vehicle on October 18, 2000.

JOINT STATEMENT OF ISSUE:

On October 18, 2000 a spot check was performed by Supervisor R. Clark while Mr. Riley was performing deliveries at the loading zone of the Rideau Shopping Centre. During this spot check Mr. Clark forced open a partially open side window and reached in and removed a second set of ignition keys from Mr. Riley's personal coat which was hung on the driver's seat.

Mr. Clark then confronted Mr. Riley and advised him that he was going to be investigated for having an unsecured vehicle.

An investigation was conducted on October 23, 2000, at which time the actions of Mr. Clark were questioned by Local Chairman Joe Schock in accordance with article 6.2 of the collective agreement. The interview was abruptly terminated at that time.

The Union argued that the actions of Mr. Clark were a violation of Mr. Riley's rights as his private property was searched without his consent or knowledge. The Union further argued that his rights under 6.2 were violated as a result of an improperly conducted interview and therefore article 6.3 should be invoked. In addition, the Union argued that there was no violation of Canpar's policies or rules.

The Company denied all the Union's requests.

FOR THE UNION:

(SGD.) D. J. DUNSTER
STAFF REPRESENTATIVE

FOR THE COMPANY:

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

There appeared on behalf of the Company:

R. Dupuis	– Terminal Director, Montreal
R. Clark	– Supervisor, Ottawa
A. Plouffe	– Witness
R. Derouchie	– Witness

And on behalf of the Union:

D. Dunster	– Staff Representative, Ottawa
J. Schock	– Local Protective Chairman, Ottawa

P. Riley

– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that on October 18, 2000 Ottawa Supervisor R. Clark observed the delivery van of the grievor, Mr. Pierre Riley, parked in the loading dock area of the Rideau Shopping Centre with the driver's side window open. It appears that Mr. Clark proceeded to the vehicle, put his hand through the window and removed a set of keys to the van from the pocket of the grievor's windbreaker which was hanging on the driver's seat. Shortly thereafter he confronted Mr. Riley at the rear of the vehicle with the keys which he had removed, at which time Mr. Riley explained that he carried a separate set of keys, and that the keys left in his jacket pocket were merely a precaution. Following a disciplinary investigation the Company determined that the grievor had left his van unsecured, and assessed fifty demerits against his record, resulting in his discharge.

A primary attack against the Company's action by the Union is based upon its allegation that the Company failed to abide by the provisions of the collective agreement in the manner in which the investigation was conducted. The Union relies on the following portion of article 6.2 of the collective agreement:

6.2 ... Whenever a written statement by a person employed by the Company is entered at the interview, the employee will have the right to request the presence of that person at the interview. The employee and his Union representative may ask appropriate questions to all parties at the interview.

It alleges that the conduct of the investigation violated the foregoing standard and that the discipline must therefore be viewed as null and void, by the terms of article 6.3 which provides:

6.3 Failure to comply with article 6.2 shall render any conclusion null and void, and any statements at such interviews inadmissible at any subsequent proceedings.

After a close review of the materials filed the Arbitrator is compelled to sustain the position of the Union. The record discloses that the disciplinary investigation, held on October 23, 2000, was conducted by Mr. Clark, the very person who observed the grievor's truck on the 18th, and who took the set of keys from the pocket of Mr. Riley's windbreaker. During the investigation Mr. Riley was represented by the Union's Local Protective Chairman, Mr. Joe Schock. As emerged at the arbitration hearing, it was part of the Union's belief that in fact Mr. Riley had never left his vehicle when the window was observed to be open by Mr. Clark, but was sorting parcels at the rear end of the van, through its open doors. The Union maintains that that transpired while the bulkhead door separating the cab of the van from the cargo section was locked. It is also not disputed that Mr. Schock had concerns about the manner in which Mr. Clark had gone into the pocket of Mr. Riley's jacket to obtain the keys, the presence of which Mr. Clark apparently discovered only by shaking the jacket. Seeing these elements of fact as being important, Mr. Schock attempted to ask Mr. Clark about the manner in which he had found the keys. When Mr. Schock first put the question to Mr. Clark, who was of course in the dual capacity of investigator and witness, Mr. Clark refused to answer. When Mr. Schock insisted that the question should be answered Mr. Clark abruptly terminated the investigation, allowing no further questions. In the result, questions which might have elucidated the whereabouts of Mr. Riley at the time Mr. Clark observed the vehicle – a matter which only became clear at the arbitration hearing – could not be pursued by the Union.

In these circumstances I am compelled to accept the submission of the Union that its representative, and Mr Riley, were denied the protections contemplated by article 6.2 of the collective agreement. Mr. Grant, the investigating officer, was in essence the only witness of the Company against the grievor. While he might well have believed questions as to the propriety as to his taking keys from the grievor's pocket to be irrelevant or inappropriate, the proper course for him would have been to note those questions and to rule on them accordingly. That is not what Mr. Clark did, however, Rather, he refused to answer that question or any further questions whatsoever, and summarily terminated the investigation. By so doing he obviously denied the Union the right to ask other arguably relevant questions of the key witness for the Company, in a manner contrary to the contemplation of article 6.2 of the collective agreement. As a result, as noted above, it appears that the precise location of the grievor and Mr. Clark was never clarified in the eyes of the Union before the Arbitration hearing, including whether in fact Mr. Riley was still loading or unloading his vehicle at the time in question, a circumstance in which the obligation to secure the vehicle would not apply.

By the terms of article 6.3 of their agreement the parties have agreed that a violation of article 6.2 "... shall render any conclusion null and void ...". In the circumstances I am compelled to conclude that the discipline assessed against the grievor must be declared void *ab initio*. The grievance is therefore allowed. The Arbitrator directs that the grievor be reinstated into his employment forthwith, with compensation for all wages and benefits lost, without loss of seniority and with his record to be restored to its previous status.

February 19, 2001

(signed) MICHEL G. PICHER
ARBITRATOR