

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3216

Heard in Calgary, Wednesday, 14 November 2001

concerning

CANPAR

and

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

DISPUTE:

Twenty (20) demerits issued to Calgary employee Brent Plante for June 26, 2001 trailer disconnection.

JOINT STATEMENT OF ISSUE:

The Union filed a grievance regarding the abovementioned matter on July 25, 2001.

The Union contends the twenty (20) demerits issued regarding this dispute are unwarranted and violated article 6.1 of the collective agreement. The Union has grieved that there is no evidence that the grievor was negligent in his duties. The Union's position is that the probable cause of the trailer disconnection was due to a malfunction of the locking mechanism between the trailer ball and the hitch.

The Company contends that the discipline is warranted and they have not violated the collective agreement. The Company submits that in their opinion the trailer disconnection was a result of the grievor not ensuring the trailer was secured properly.

The parties have not been able to resolve the dispute to date.

FOR THE UNION:

(SGD.) A. KANE
GOVERNING BOARD REPRESENTATIVE

FOR THE COMPANY:

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

There appeared on behalf of the Company:

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| P. D. MacLeod | – Vice-President, Operations, Mississauga |
| K. Greenfield | – Manager, Alberta |
| K. Bouchard | – Supervisor, Calgary |

And on behalf of the Union:

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| A. Kane | – Governing Board Representative, Vancouver |
| B. Plante | – Grievor |

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor was involved in an accident in which his PD trailer became unhitched from the truck which he was driving, apparently after crossing a stretch of bumpy road in Calgary on June 26, 2001. Examination of the equipment confirmed that the hitch mechanism was itself not defective. As it was in the locked position, secured by a pin, after it released from the ball of the trailer hitch, the Company's supervisors concluded that the trailer had not been properly connected by Driver Representative Plante at the beginning of his tour of duty.

Upon an examination of the evidence I am satisfied that there was a degree of error on the part of Mr. Plante. It does not appear disputed that he did receive initial instruction from his supervisor in how to connect the trailer hitch. It appears that the hitch could be improperly connected, with the coupling mechanism merely resting on top of the trailer hitch ball, thereby allowing the trailer to be pulled, albeit in an unsecured manner. I am satisfied, on the balance of probabilities, that that is what transpired in the case at hand. The evidence would appear to confirm, on balance, that it would be physically impossible for the mechanism to release from the ball, if it was properly seated, locked and secured with the locking pin. In the circumstances, therefore, I find that the Company did have cause to assess discipline against Mr. Plante.

The next issue becomes the appropriate measure of discipline. Twenty demerits is, by any account, a serious degree of discipline. In my view, given the grievor's length of service, which dates to 1986, and the quality of his prior disciplinary record over his relatively long years of service, twenty demerits is excessive for his inadvertent error of judgement. In my view the assessment of ten demerits would, in these circumstances, suffice to convey to Mr. Plante the need to be more careful in fastening his trailer hitch.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor's disciplinary record be adjusted to reflect the assessment of ten demerits for his failure to properly secure his trailer on June 26, 2001.

November 16, 2001

(signed) MICHEL G. PICHER
ARBITRATOR