

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3228

Heard in Montreal, Wednesday, 12 December 2001

concerning

CANPAR

and

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

DISPUTE:

Ottawa employee K. Diotte was issued twenty (20) demerits for allegedly “failing to follow instructions of authorized personnel” on February 2, 2001.

JOINT STATEMENT OF ISSUE:

Ms. Diotte had been instructed to fill in an accident report on February 2, 2001 regarding an alleged accident that occurred on January 19, 2001, when her vehicle became stuck in snow requiring the assistance of a tow truck.

Upon completion of her scheduled duties February 2nd, she returned to the terminal at her regular time. Mr. Gaudreaut, the supervisor she had been dealing with concerning this matter, was not in the terminal. Consequently, Ms. Diotte, wanting to deal directly with him, filled in the form on Monday, February 5th.

An investigation was held February 7th and Ms. Diotte was subsequently issued twenty (20) demerits on February 16th for failing to follow instructions of authorized personnel.

The Union argued that it was not past practice to fill out accident reports for incidents of this nature. The Union further argued that Ms. Diotte did fill out the accident report and therefore no discipline should have been issued.

The Company declined all of 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:

P. D. MacLeod	– Vice-President, Terminal Operations
R. Dupuis	– Regional Manager, Quebec
R. Gaudreaut	– Supervisor, Ottawa
R. Derouchie	– Manager, Ottawa

And on behalf of the Union:

D. J. Dunster	– Staff Representative, Ottawa
J. Schock	– LPC Unit 2344

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor's truck became stuck in snow on January 19, 2001. It became necessary for a tow truck to be retained to assist her vehicle, with resulting cost to the Company.

There appears to be some disagreement between the parties as to whether it was normal for the Company to require an accident report in that kind of circumstance. The Union maintains that it was not generally done in the Ottawa terminal. The material before me, however, appears to establish that on January 22, 2001, Ms. Diotte was directly instructed by the terminal manager to complete an accident report in respect of the incident. She did not do so, apparently based on her belief that it was not the practice to file an accident report for such an incident. During the course of her disciplinary investigation Ms. Diotte explained that she wished to obtain further instruction from her union in that regard.

It also appears that on February 2, 2001 her supervisor gave her another specific direction to complete the report by the end of that day. Ms. Diotte then called the Company's Vice-President of Human Resources, who invoked the assistance of Union Staff Representative D. Dunster. It seems that Mr. Dunster properly advised the grievor that she should fill the report. She did not then do so, however. The evidence discloses that no report was filed by February 5, 2001, at which point the grievor received notice of a disciplinary interview for failing to follow instructions. The following day, February 6, 2001, she finally filled out the accident report.

Arbitral jurisprudence has long established that the work place is not conceived as a debating society. While an employee may object to a specific instruction, and communicate that objection to the supervisor who gives it, when the employer insists on the instruction being carried out the employee is then under an obligation to do so, in keeping with the "obey now – grieve later" rule. The only exceptions in that regard arise when to carry out the order might involve engaging in unlawful or unsafe conduct. Those circumstances plainly do not arise in the case at hand.

The grievor has been employed by the Company since 1987 and has, over the years, incurred discipline for being abusive towards a supervisor or failing to follow instructions on at least two prior occasions. In the Arbitrator's view, it is difficult to understand her conduct in the instant dispute without concluding that, for reasons she best appreciates, Ms. Diotte willingly engaged in an improper and unproductive battle of wills with her supervisors. This is not, in my view, a situation which can be excused by inadvertence on her part, or some other misunderstanding. Indeed, it appears that she continued to neglect to file the report demanded of her even after she was advised to do so by the Union's Staff Representative.

In all of the circumstances, bearing in mind that fifteen demerits were previously assessed for insubordination by the grievor, I am not prepared to vary the assessment of twenty demerits which the Company viewed as necessary to bring home to her the importance of obeying instructions.

The grievance must therefore be dismissed.

December 19, 2001

(signed) MICHEL G. PICHER
ARBITRATOR