

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3297

Heard in Calgary, Tuesday, 12 November 2002

concerning

**CANPAR**

and

**UNITED STEELWORKERS OF AMERICA, LOCAL 1976**

### **DISPUTE:**

Employee S. Cherney was assessed twenty-four (24) demerits and suspended for one day for allegedly falsifying his delivery records with regards to deliveries to 1035 Gateway Rd. on February 6 and 8, 2002.

### **JOINT STATEMENT OF ISSUE:**

The Union contends that Mr. Cherney did not falsify any documentation with regards to his deliveries. The Union argued that the discipline was unwarranted, unjustified, excessive and discriminatory. In addition, the Union argued that there has been a violation of article 6.2.

The Company denied all the Union's contentions.

### **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, Mississauga
- R. Thomson – Terminal Supervisor, Winnipeg

And on behalf of the Union:

- B. Plante – Local Chairman, USWA Local 1976, Calgary
- S. Cherney – Grievor

### **AWARD OF THE ARBITRATOR**

The primary issue in the case at hand is whether the grievor did fail to attempt deliveries at 1035 Gateway on February 6 and February 8, 2002. Subsidiary issues are the appropriate measure of discipline, assuming the grievor did fail in his duty, and the delay in the investigation.

In the Arbitrator's view, the evidence of the Company, particularly as relates to the events of February 8, 2002, is persuasive. Based on the grievor's delivery reports for February 6, and the extremely brief times registered in the stops before and after 1035 Gateway, apparently a Superstore, doubts arose in the mind of Terminal Supervisor Rob Thomson as to whether the store was closed, as recorded by Mr. Cherney. Mr. Thomson had concerns that in fact the grievor had made no attempt to make the delivery in question, and simply recorded the location as closed to avoid having to make the stop. He therefore decided to observe the site two days later, on February 8, 2002.

Mr. Thomson's evidence, which the Arbitrator accepts as reliable, reveals that he proceeded to the Superstore on the 8th, arriving there at approximately 9:30 a.m. He parked his car in a location which allowed him to observe both the loading dock and a side door, also used for receiving deliveries, at the location. By his account over the next hour there was no sign of the grievor's truck at the premises, and he left at or about 10:30 a.m. That day Mr. Cherney's delivery record nevertheless recorded a stop at 1035 Gateway, noting that the customer was closed.

Unfortunately some delay occurred before the disciplinary interview was convened. The Arbitrator is satisfied that the delay was attributable to the temporary absence of a shop steward who was apparently on vacation. It would seem, however, that the delay was with the Union's agreement, and in the circumstances there is no violation of the requirements of article 6.2 of the collective agreement disclosed.

Having regard to the whole of the evidence, the Arbitrator is satisfied that the Company has discharged the burden of proof which is upon it in this matter. The issue then becomes whether the assessment of twenty-four demerits was excessive in the circumstances. There are mitigating factors to be considered. Firstly, the grievor is an employee of more than twenty years' service. While his disciplinary record does contain infractions of various kinds over the years, they are generally minor and none of them call into question the grievor's honesty or involve any attempt to falsify Company records. In all of the circumstances, and having particular regard to the long service of Mr. Cherney, the Arbitrator is satisfied that a reduction of discipline is appropriate in the circumstances.

The grievance is therefore allowed, in part. The Arbitrator directs that assessment of ten demerits be substituted upon the grievor's record for the events of February 6 and February 8, 2002.

November 19, 2002

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**