

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3477

Based on the parties' written submissions

concerning

CANPAR TRANSPORT LTD.

and

UNITED STEELWORKERS OF AMERICA (LOCAL 1976)

DISPUTE:

The assessment of 10 demerit marks to Mr. Frank Scrivo for not having done his pre-trip properly on August 18, 2003.

JOINT STATEMENT OF ISSUE:

On August 18, 2003 Mr. F. Scrivo called Supervisor Depatie and requested the authorization to put \$20 of gasoline in the Company's truck because the gauge was low. Mr. Scrivo did not have the Company credit card on hand. Supervisor Depatie authorized the request.

On August 26, 2003 Mr. F. Scrivo presented himself at an interview to "explain why he forgot to bring the gas credit card and explain that he did perform his pre-trip correctly on August 18, 2003." On September 3, 2003 the Company placed 10 demerit marks against Mr. F. Scrivo's record for not having done his pre-trip properly on August 18, 2003.

The Union grieved that there was no cause for discipline in this case, a violation of article 6.1, and requested to have the 10 demerit marks removed from Mr. Frank Scrivo's record.

The Company denied the grievance.

FOR THE UNION:

(SGD.) RICHARD PAGÉ
FOR: PRESIDENT, LOCAL 1976

FOR THE COMPANY:

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

AWARD OF THE ARBITRATOR

This arbitration was by a hearing through written submissions only.

The thrust of the position advanced by the Company is that on August 18, 2003 the grievor, Mr. Frank Scrivo, failed to properly verify the level of fuel in his truck before leaving the terminal. It is not disputed that during the course of his working day the grievor did call the terminal to indicate that he was not certain that he had sufficient fuel, then receiving permission to use \$20 of his own money to top up his gas tank. It is not disputed that the normal practice is for employees to verify the level of gas in their trucks during the course of their morning preparations and to take a gas credit card with them should it appear that they might have to fill their gas tank during the course of their tour of duty.

The Union's submission stresses that the Company's written policies, including the check lists with respect to the pre-trip inspection of their vehicle, makes no mention of the fuel level in their truck. The Company's submission, however, indicates that standard training directs all drivers to verify the fuel level of their truck in the morning, and that indeed such an instruction did exist in the written policies of the workplace, at least until 1997. There can be little doubt but that the grievor was aware of that policy, having been hired in 1985. The Company's representative stresses that the grievor was not disciplined for not having a gas card in his possession. The ten demerits were

assessed because of the Company's conclusion that Mr. Scrivo in fact failed to verify the fuel level of his truck during his morning inspection. The Arbitrator finds it difficult to reject that reasoning. On the theory advanced by the grievor, he was well aware that he was likely to be short of fuel, made a half-hearted attempt to obtain a fuel card by asking two employees and his supervisor and then knowingly left the workplace without a card in his possession. The Arbitrator has some difficulty in understanding how that can be in conformity with proper procedure, quite apart from the current state of the written policies or the scanner windows relating to the pre-trip inspection. I am satisfied that in fact he failed to check his gas level, as required, and did not in fact make any effort to obtain a gas credit card.

On behalf of the grievor the Union suggests that other employees in similar circumstances have not been assessed any discipline. Unfortunately, on the written submissions before me that stands, at best, as a gratuitous assertion, as no names or specificity are provided with respect to any prior incidents, and the Company expressly denies knowledge of any such events.

It would seem self-evident that for an employee in the position of the grievor to find himself short of fuel on his truck during the course of the day, and without any means of obtaining fuel save by using his own money, he has deviated from normal standards of conduct. The efficient operation of the Company's delivery business obviously depends, to a substantial degree, on the proper and thorough performance of the pre-trip routines before any vehicle leaves the terminal. The mere fact that the

Company has gas credit cards and distributes them to its drivers on a daily basis is perhaps the clearest reflection of the well-established policy of the Company with respect to the process to be followed.

On the whole the Arbitrator is satisfied that Mr. Scrivo did render himself liable to discipline for the events of August 18, 2003 by failing to properly conduct his pre-trip inspection and make a determination as to the fuel level in his truck. The assessment of ten demerits is within the appropriate range of discipline for such an infraction and should not be disturbed.

The grievance must therefore be dismissed.

April 18, 2005

(signed) MICHEL G. PICHER
ARBITRATOR