

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

**CASE NO. 3484**

Based on the parties' written submissions

concerning

**CANPAR TRANSPORT LTD.**

and

**UNITED STEELWORKERS OF AMERICA (LOCAL 1976)**

**DISPUTE:**

Mr. Ed Hosh a Canpar Saskatoon employee being assessed 20 demerits March 24, 2003 to his work record for "an incident with Lead Hand".

**JOINT STATEMENT OF ISSUE:**

On March 5, 2003 Lead Hand Mr. Terry Schmid in a written statement to the Company claimed Mr. Hosh spoke to him in a threatening manner during a conversation with him regarding the dispatching of freight that morning.

An interview was held March 11, 2003 regarding the "incidents in the morning of March 05, 2003." During the interview Mr. Hosh cited article 6.2 of the collective agreement that the reason for the interview was not properly explained in the notice, that the subject matter with applicable details was not explained on the notice. The interview was stopped by the Employer.

An interview notice was then given to Mr. Hosh to be held March 13, 2003 regarding the matter of "incidents on the morning of March 05, 2003 wit Mr. Schimd." (sic)

The Union contends there is no evidence proven during the above interview or elsewhere that the incidents described in Mr. Schmid's statement happened in the way he described. The Union asserts the two witnesses to the alleged incident do not corroborate Mr. Schmid's declaration and further that the Company has not met the burden of proof in this case. The Union grieved that the collective agreement was violated under article 6 that the discipline was not warranted and as such the discipline should be removed.

The Company denied the Union's request stating there was no violation of the collective agreement and the discipline was warranted.

The Union's position remains the same.

**FOR THE UNION:****(SGD.) D. NEALE**  
VICE-PRESIDENT, LOCAL 1976**FOR THE COMPANY:****(SGD.) P. D. MACLEOD**  
VICE-PRESIDENT, OPERATIONS**AWARD OF THE ARBITRATOR**

Having examined the submissions of the parties, the Arbitrator appreciates that the sole issue in this case is a matter of credibility. Mr. Hosh maintains that there was no incident between himself and Mr. Schmid on the day in question. Mr. Schmid, on the other hand, maintains that he was made the subject of abusive language, culminating in the threat, "Schmid, one day you're going to get it!". The incident caused Mr. Schmid to register a formal complaint with the Company, as a result of which an investigation was pursued.

The Arbitrator cannot sustain the technical objections to the investigation conducted by the Company. I am satisfied that there was sufficient particularity in the notice given to the grievor, particularly as it was amended. Nor can I sustain the suggestion that the apparent failure of the Company to provide a copy of the discipline issued to the Union would render the discipline null and void. There is no language in the collective agreement which would sustain such a conclusion. I do view as regrettable, however, the fact that the Company officer who conducted the disciplinary interview insisted on asking the grievor, apparently several times, whether he was calling his fellow worker a liar. Questions of that kind serve little purpose, save to destroy relationships in the workplace which will be ongoing, regardless of the outcome. People can simply have a different recollection of the same events and different

accounts do not necessarily mean that one person is lying. That said, however, I do not find that there was a departure from the obligation to conduct a fair and impartial investigation.

With respect to the issue of credibility, however, the Arbitrator is not persuaded by the case advanced on behalf of Mr. Hosh. While it is true that others were not able to corroborate the precise words used, at least one of two other employees confirmed that he recalled a verbal altercation of some kind taking place between Mr. Hosh and Mr. Schmid on the day in question. That recollection is clearly at odds with Mr. Hosh's assertion that he could recall no incident whatsoever, suggesting that the entire matter was made out of whole cloth by Mr. Schmid.

Simply put, Mr. Hosh is not to be believed. An examination of his prior record raises substantial concern as to whether he appreciates the need to maintain civility and respect in his communications with other employees and supervisors. Indeed, his record indicates difficulties in being respectful to police officers in the past. Given his extensive record with respect to such misconduct, the Arbitrator is not persuaded that this is a case to reduce the discipline assessed against Mr. Hosh.

For all of the foregoing reasons the grievance is dismissed.

May 16, 2005

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