

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

CASE NO. 3486

Heard in Montreal, Thursday, 12 May 2005

concerning

CANPAR TRANSPORT LTD.

and

UNITED STEELWORKERS OF AMERICA (LOCAL 1976)

DISPUTE:

Sixty (60) demerits issued to Ottawa employee Mr. Joe Schock and his termination of employment with the Company for allegedly being insubordinate and refusing to follow instructions of a supervisor on November 09, 2004.

JOINT STATEMENT OF ISSUE:

The Union filed a grievance regarding the above mentioned matter on January 10, 2005. The Company denied the grievance on January 17, 2005. The parties have been unable to resolve the dispute to date.

The Union contends that on November 9, 2004 Mr. Schock brought to the attention of his immediate supervisor the legitimate need for him not to work overtime that day. The Union agrees that 48 hours' advance notice was not given to the Company as expected in Appendix C of the collective agreement. However, the Union asserts Appendix C allows for an employee to give notice to the Company on the very day he requests not to work overtime because of a family obligation, emergency or an appointment.

The Union state Mr. Schock did not disobey Mr. Gaudreault by not going on his route that day as he was not ordered to go out and deliver freight but given a choice. Further, the Union asserts the burden of proof Mr. Schock was insubordinate to Mr. Gaudreault has not been met by the Company.

The Union grieved the discipline received as unjust, extreme and without merit and requested to have Mr. Schock reinstated with all salary, benefits and seniority lost since his termination.

The Company maintains that the discipline is warranted and declined the grievance.

FOR THE UNION:

(SGD.) D. NEALE
VICE-PRESIDENT, LOCAL 1976

FOR THE COMPANY:

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

There appeared on behalf of the Company:

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| M. Failes | – Counsel, Toronto |
| P. D. MacLeod | – Vice-President, Operations, Mississauga |
| B. Neill | – Vice-President, Human Resources, Mississauga |
| R. Dupuis | – Regional Manager, Quebec & Ottawa |
| R. Derouchie | – Manager, Ottawa |
| R. Gaudreault | – Supervisor, Ottawa |

And on behalf of the Union:

- | | |
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| P. J. Conlon | – Chairman, Board of Trustees, Toronto |
| N. Lapointe | – President, Local 1976, Montreal |
| J. Schock | – Grievor |

AWARD OF THE ARBITRATOR

The facts giving rise to this arbitration are not in dispute. On November 9, 2004 the grievor did engage in disrespectful and insubordinate conduct during the course of his communications with a supervisor. The tension between the two arose by reason of the grievor's failure to have given sufficient prior notice of his need to not work overtime on the day in question, apparently because he was under an obligation to pick up his child from daycare at the end of the working day. It was clearly open to the grievor to advise his supervisor of the situation in the morning, make every effort to conclude his deliveries and if he should encounter difficulties at or about mid-day, to keep the Company advised so that alternative arrangements could have been made to complete his route. Rather than pursue that approach, however, the grievor persisted in disagreeing with his supervisor's opinion that the load on his truck could be handled short of overtime, and resorted to physically mocking his supervisor at one point during

their discussion. When the supervisor finally indicated to the grievor that he could proceed to do his deliveries or go home, for reasons he best understands Mr. Schock elected to go home.

The record discloses that the employer has suffered greatly the immature behaviour of the grievor, and in particular his insubordination. While Mr. Schock has relatively long service, having been hired in 1987, the record discloses that he was disciplined on a number of occasions over the years, once receiving twenty demerits on October 12, 2001 for “threatening and verbal abuse”. Following an incident in October of 2003, his record was made the subject of an adjustment following mediation in this Office. (**IEHP Case No. 6**, mediation hearing of June 8, 2004) That was clearly intended to communicate to the grievor that he was in a “last chance” situation. Notwithstanding that event, he subsequently received two written warnings, one of which, on March 29, 2004 was for failing to follow instructions. On the day of his altercation with his supervisor, Mr. Schock's disciplinary record stood at fifty-nine demerits as a result of an incident which occurred only five weeks earlier (**CROA&DR 3485**). His obvious recklessness with respect to his own job security on that occasion, coupled with the disciplinary record touched upon above, leaves little reason to believe that yet another last chance would essentially change his conduct. At the very least, given the fact that the Company did follow principles of progressive discipline and demonstrated great patience in dealing with the grievor in the past, there is no compelling reason to subject the employer to the risk of similar conduct by a substitution of remedy in this case.

For the foregoing reasons the grievance is dismissed.

May 15, 2005

(signed) MICHEL G. PICHER
ARBITRATOR