

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

CASE NO. 3497

Heard in Edmonton, Tuesday, 12 July 2005

concerning

CANPAR

and

UNITED STEELWORKERS OF AMERICA, LOCAL 1976

DISPUTE:

The assessment of 30 demerit marks to Mr. Colin Primeau for failure to follow direction of authorized personnel.

JOINT STATEMENT OF ISSUE:

On February 17, 2005, Mr. Primeau left the terminal accompanied by Quebec Regional Manager Robert Dupuis. After departing the terminal, Mr. Dupuis on 3 occasions instructed Mr. Primeau not to make a complete stop at intersection. Mr. Primeau stopped on the 3 occasions

Mr. Primeau called his supervisor at the terminal to let him know that he was being ordered to perform unsafe acts.

Mr. Primeau indicated to Mr. Dupuis that he was returning to the terminal. Mr. Dupuis instructed Mr. Primeau several times that he was not to return to the terminal but to continue with his duties. Mr. Primeau returned to the terminal at 9:30 am and proceeded to go home.

On March 11, 2005, Mr. Primeau attended an investigative interview in connection with his failure to follow direction of a company officer. Mr. Primeau indicated he went home because he was sick. On March 14, Mr. Primeau was assessed 30 demerits on his discipline record for failure to follow direction of authorized personnel.

The Union claimed the discipline was unjust and unwarranted, that the Company had ordered Mr. Primeau to perform an unsafe act. The Union further claimed that Mr. Primeau returning to the terminal was not an insubordinate act. He returned to the terminal because he felt ill.

The Company denied the grievance.

FOR THE UNION:

(SGD.) N. M. LAPOINTE
NATIONAL PRESIDENT, LOCAL 1976

FOR THE COMPANY:

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

There appeared on behalf of the Company:

P. D. MacLeod – Vice-President, Operations, Mississauga

And on behalf of the Union:

A. Kane – Regional Vice-President, Vancouver
R. Thompson – Shop Steward, Calgary
D. Bron – Shop Steward, Edmonton

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that on February 17, 2005, while being accompanied on his Calgary route by a Regional Manager from Quebec, the grievor was instructed to not make a stop of his vehicle upon entering a roadway, contrary to the provisions of the **Alberta Traffic Safety Act**. It appears that this occurred on two occasions, causing the grievor to indicate to the supervisor that the Regional Manager was in error. Subsequently, when the supervisor again berated the grievor for stopping at an intersection where no stop was posted, the grievor communicated with his terminal supervisor to advise that he was being asked to perform unsafe operations. Upon being advised by his supervisor not to perform any unsafe operations Mr. Primeau then indicated to the Regional Manager who was riding in the vehicle with him that he had had enough, that he could not take any more and that he was returning his vehicle to the terminal. It appears that the manager then warned him that he would be disciplined if he did so. Notwithstanding that warning, the grievor returned to the terminal and left the workplace.

The evidence confirms that Mr. Primeau attended at a doctor's office that day and was found to be suffering from high blood pressure and unfit to work. It is not disputed that thereafter he remained off work for a period of some four weeks.

In the Arbitrator's view it is difficult to see upon what basis the grievor could justly be disciplined. The evidence confirms, beyond controversy, that he was directed, on at least two occasions, to engage in what would have involved a violation of the law. Thereafter, when he was told by the manager who was riding in the vehicle with him that he should not return to the terminal but should continue to complete his duties, the documented medical evidence indicates that the grievor was in fact not fit to work. In these circumstances, on what basis can any discipline be properly assessed?

The grievance is allowed. The Arbitrator directs that the thirty demerits assessed against the grievor be stricken from his record forthwith.

July 19, 2005

(signed) MICHEL G. PICHER
ARBITRATOR