

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

CASE NO. 3573

Heard in Edmonton, Thursday, 13 July 2006

concerning

CANPAR

and

UNITED STEELWORKERS OF AMERICA, LOCAL 1976

DISPUTE:

Steve Dmytriw, Kelowna, B.C.: thirty (30) demerits for vehicle abuse.

JOINT STATEMENT OF ISSUE:

The Company held an investigation regarding damage caused by the misalignment of the rear axles of the grievor's regularly assigned truck. The Company subsequently disciplined the grievor thirty (30) demerits for vehicle abuse.

The Union argued that the Company has not followed the principles of a progressive discipline system and the discipline issued is unwarranted and violates article 6.1 of the collective agreement.

The Company contends that the grievor was responsible for the damage and that the damage was caused between January 23 and January 27, 2006. The Union contends that the grievor had reported the truck had a dog-tracking problem as early as 2003. The ongoing problem with the truck had not been fully addressed and was known to other employees at the Kelowna terminal.

The Company contends that hitting a solid object like a curb was the probable cause of the damage. The Union has argued that the alignment problem could have been exacerbated by normal driving over rough winter roads.

The parties have not been able to resolve the dispute to date.

FOR THE UNION:

(SGD.) A. KANE
STAFF REPRESENTATIVE

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 – Staff Representative, Vancouver

AWARD OF THE ARBITRATOR

The grievor was assessed thirty demerits by reason of the Company's belief that he was responsible for damage to the rear end of his truck. The damage was apparently caused by a blow to the rear wheels which caused a misalignment of the rear axle and a resulting "dog tracking" whereby the rear wheels travel out of line with their counterpart front wheels.

The Company maintains that the problem was discovered when the grievor took his delivery truck to the repair facility to have the wheels re-torqued. Mr. Dmytriw then indicated to the service person that the vehicle was dog tracking. The truck was immediately diagnosed as misaligned, with bent and broken suspension parts on the vehicle's undercarriage, resulting in a repair bill in excess of \$1,000.

The Employer surmised that the grievor must be responsible for the damage to the truck, as he had been the only person to drive it between January 19 when it had returned from a prior service and January 26 when the damage was discovered.

The Union maintains that the record of dog tracking and problems with the truck in fact date back to 2003, when the grievor was admittedly involved in striking a heavy rock, at which his time his truck had to undergo repairs. According to a statement prepared by the grievor, filed in evidence, he maintains that dog tracking had been an ongoing problem with the truck since the original repair. The Union's representative also alleges that he was unfairly denied access to documentation about his truck at the interview conducted by the Employer.

The Arbitrator cannot sustain the latter objection. The joint statement of issue, which circumscribes my jurisdiction, makes no mention of that allegation. Alternatively, I would be inclined to agree with the Company's representative that the collective agreement does not require the sharing of the document, as it was not entered into the investigation. The provisions of the instant collective agreement do not mandate the degree of protection found in the other collective agreements in this Office, with respect to the procedural standards of disciplinary investigations.

With respect to the merits, the Arbitrator has some difficulty concluding that the Company has discharged its burden of proof in this matter. The evidence against the grievor is entirely circumstantial, there being no direct evidence of any noticeable accident or conscious abuse of the vehicle by the grievor. If the circumstantial evidence were entirely consistent only with wrong-doing by Mr. Dmytriw, the Company's case might be more compelling. It is not clear, however, whether it might not be possible that the grievor's truck maintained a residual flaw from the original accident in 2003 or,

alternatively, whether a fresher incident might have occurred, but without the grievor noticing.

From the standpoint of credibility, it may be noted that Mr. Dmytriw is a long service employee with twenty-two years of service. He was discipline free at the time of the incident, and in his entire twenty-two years of service had previously been disciplined only once, in 1998, and never for an accident or for vehicle abuse.

While the Arbitrator readily understands the Company's viewpoint, the rules of evidence do not allow an adjudicator to convert suspicion into legal conclusions. On the material before me I cannot find, on the balance of probabilities, that the condition of the grievor's truck, as found on January 26, 2006, must be attributed to abusive driving and a failure to report on the part of the grievor.

For the foregoing reasons the grievance must be allowed. The Arbitrator directs that the demerits assessed against Mr. Dmytriw be removed from his record forthwith.

July 17, 2006

(signed) MICHEL G. PICHER
ARBITRATOR