

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

**CASE NO. 3590**

Heard in Montreal, Tuesday, 12 December 2006

Concerning

**CANADIAN NATIONAL TRANSPORTATION LIMITED**

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND  
GENERAL WORKERS UNION OF CANADA (CAW-CANADA)**

**DISPUTE:**

Concerning the dismissal of Owner-Operator R. Perry.

**JOINT STATEMENT OF ISSUE:**

On July 16, 2006, a wheel separated from chassis CNRZ 183016 while being pulled by Owner-Operator Mr. Ron Perry. The Company investigated the incident and terminated the grievor as well as seven other owner-operators for allegedly failing to properly complete the pre-trip inspection of the chassis.

It is the Company's position that the owner-operators in question did not complete a thorough pre-trip inspection as required by the standard contract and the Company's operating instructions. The Company argues that given a previous fatal accident involving a CNTL chassis, and its heightened focus on wheel and axle safety in pre-trip inspections, the failure of an owner-operator to properly complete pre-trip inspections is a major violation of the standard contract and justifies termination.

It is the Union's position that the owner-operator did indeed perform a circle check and did not notice any problem with the chassis. The grievor did discover a loose wheel when going through the gate and followed the proper procedures. Furthermore, even if the Company could show that the owner-operators did not do a proper check, there are a number of mitigating factors involved. First, the chassis was new and there was no reason to believe that it would not contain oil. Second, the chassis had a "green" tag, indicating that it had been inspected by the Company's garage and passed the safety inspection. Third, if the Company was correct that the axle was without oil, the glass cover would be burnt and appear to be full of oil. Finally, the discipline is extreme in the circumstances.

The Union requests that the grievor be reinstated without loss of compensation, benefits and seniority.

**FOR THE UNION:**

**(SGD.) D. OLSHEWSKI**  
NATIONAL REPRESENTATIVE

**FOR THE COMPANY:**

**(SGD.) D. S. FISHER**  
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

- R. A. Bowden – Manager, Labour Relations, Toronto
- J. Krawec – Manager, Labour Relations, Toronto
- M. Peterson – Manager, Field Operations, Toronto
- C. Parente – Supply Manager Fleet, Montreal

And on behalf of the Union:

- D. Olszewski – National Representative, Winnipeg
- S. Prudames – Regional Representative, Toronto
- R. Perry – Grievor

**AWARD OF THE ARBITRATOR**

The material before the Arbitrator confirms that the wheel of the chassis being pulled by the tractor of Owner-Operator Ron Perry separated by reason of there being no oil in the rear axle of the chassis. The Arbitrator accepts the documentary evidence of the Company which confirms that the chassis, which was new, had never been properly inspected, and that both the company which supplied the chassis, the Company's own inspectors who took delivery of the chassis and all of the seven employees who used the chassis prior to the grievor failed to notice the absence of oil in the rear axle. It is common ground that an oil check could have been performed visually by examining the glass lens on the outside of the hub of each of the rear wheels.

I am satisfied that the grievor was under an obligation to do a circle check of his unit before moving it, in accordance with Company rules. That would involve verifying

the oil levels in each of the wheel hubs on the chassis. Obviously the grievor failed to conduct a sufficient investigation so as to identify the lack of any oil in the rear axle. It is not disputed that the situation so created was extremely hazardous, as separating wheels have been known to cause highway fatalities in the past.

The issue then becomes the appropriate measure of discipline in the case at hand. In the Arbitrator's view there are mitigating factors which need to be taken into account. Principal among those is the Company's own obligation. As noted in the Union's submission, the standard contract between owner-operators and the Company places upon the Company the obligation

... at its own expense, to maintain its trailers and chassis in good operating condition during the term of this agreement and whenever assigned and utilized by the Contractor for the purposes hereof ... and to have such trailers and chassis in safe and road-worthy operating condition whenever utilized by and assigned to the Contractor hereunder.

The evidence in the case at hand confirms that the Company's agent, responsible for first inspecting the chassis in question when it was newly delivered to the Company failed to identify the lack of oil in the rear axle. To put it in the simplest terms, if the grievor failed to properly inspect the rear axle, so did the Company. This, therefore, presents itself as a case of shared responsibility.

In the circumstances, the Arbitrator is satisfied that it is appropriate to return the grievor to his employment, albeit without compensation. The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment

forthwith, without loss of seniority and without any compensation for wages and benefits lost.

December 18, 2006

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