

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

CASE NO. 3592

Heard in Montreal, Tuesday, 12 December 2006

Concerning

CANPAR TRANSPORT LTD.

and

UNITED STEELWORKERS OF AMERICA (LOCAL 1976)

DISPUTE:

The assessment of 30 demerit marks to Mr. Harold Hunter for "failure to secure vehicle on July 18, 2006" and the subsequent dismissal of Mr. Hunter for accumulation of discipline with a total of 89 demerit points.

JOINT STATEMENT OF ISSUE:

On July 18, 2006, at approximately 13:30, Mr. Robert Dupuis observed the unit 877246 with the window down on the driver's side, the helper door open, and the bulkhead door closed and locked, while Driver H. Hunter was doing a delivery at 7373 St-Denis Street. The temperature was about 27' C at that time on that day. On July 20, 2006, Mr. Hunter attended an interview for failure to secure his vehicle on July 18, 2006. At the end of the interview Mr. Hunter was held out of service without pay. On July 24, 2006, Mr. Hunter was issued 30 demerit marks and was dismissed for an accumulation of points that brought his total of demerit points to 89.

The Union grieved that the discipline was excessive and that there was no cause for the dismissal, a violation of article 6.1. The Union requested that Mr. Hunter be reinstated into his employment with the reimbursement of all lost wages and benefits and with full seniority. The Union also offered that in recognition of Mr. Hunter's disciplinary record and the fact that a rule had been broken than an alternative settlement could be negotiation for the reinstatement of Mr. Hunter.

The Company denied the grievance.

FOR THE UNION:

(SGD.) N. M. LAPOINTE
PRESIDENT

FOR THE COMPANY:

(SGD.) P. D. MacLEOD
VICE-PRESIDENT

There appeared on behalf of the Company:

P. D. MacLeod

– Vice-President, Operations, Mississauga

R. Dupuis

– Regional Manager, Quebec & Ottawa, Montreal

And on behalf of the Union:

- P. J. Conlon – Regional Vice-President, Toronto
- S. DeBellefeuille – Unit Chairperson, Lachine
- D. Neale – Vice-President
- H. Hunter – Grievor

AWARD OF THE ARBITRATOR

The evidence confirms that the grievor did leave his vehicle unsecured, as alleged by the Company, on July 18, 2006. By way of explanation, the grievor maintains that because of the excessive heat on the day in question, and the fact that the truck was relatively old, his allergies and resulting asthma were unduly affected, requiring him to leave to the cab of the vehicle open during a delivery, contrary to a clear and fundamental Company rule.

The Arbitrator has considerable difficulty with both the explanation of the grievor and the overall merits of his case. At the time of the incident in question Mr. Hunter's disciplinary record stood at fifty-nine demerits, the closest possible point to outright discharge. He knew, or reasonably should have known, that any discipline whatsoever could mean the end of his employment. In fact his record had risen that same precarious level on one previous occasion in the past, in January of 1997.

Perhaps more significantly, Mr. Hunter's overall disciplinary record is close to lamentable, involving many infractions over the years, a number of them involving the refusal to carry out directions and orders. Most significantly, on two previous occasions

Mr. Hunter was disciplined for leaving his vehicle unsecured. The most recent such event was in August of 2004, resulting in 20 demerits on his record.

As stressed by the Company's representative, the case at hand truly tests the meaning of progressive discipline and the application of the Brown System. That system is intended to give the employee, without the imposition of suspensions, a basis to understand the severity of any infractions which he or she may commit and the clear understanding of the vulnerability of his or her employment as the demerits on the employee's record accumulate towards the fatal total of sixty. In the case at hand, on two previous occasions, the grievor was assessed demerits, the most recent being twenty in August of 2004, for having left his vehicle unsecured. With fifty-nine demerits on his record he had every reason to understand that leaving his vehicle unsecured would result in his termination.

Nor is the Arbitrator persuaded by the grievor's claim to a medical disability, in the case at hand. It was obviously incumbent upon him to make any such claim to the Company well before the incident giving rise to his discharge. If in fact the grievor's medical condition of allergies could not allow him to properly secure his truck, it may well be that he could not satisfy the essential requirements of the job and that any accommodation would place the Company in a position of undue hardship. It is unnecessary to comment upon that analysis, however, to the extent that the grievor never made any attempt to seek accommodation or indeed to advise the Company that he was unable to comply with the requirement to secure his truck while away from it making a delivery.

The record before the Arbitrator demonstrates that the Company has been patient and progressive in assessing discipline against Mr. Hunter. For reasons he best understands, he appears not to have grasped the importance of securing his truck, even on a hot day. Given the unfortunate state of his prior disciplinary record, this is not a case for a substitution of penalty. For these reasons the grievance must be dismissed.

December 18, 2006

(signed) MICHEL G. PICHER
ARBITRATOR