

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

CASE NO. 3643

Conference Call Held on Monday, 21 January 2008

Concerning

CANPAR TRANSPORT LTD.

and

UNITED STEELWORKERS OF AMERICA (LOCAL 1976)

DISPUTE:

Discipline of 15 demerits assessed to Canpar Transport employee Mr. J.B. Zagdanski for an infraction of "failure to report for assigned duties" November 24, 2006.

JOINT STATEMENT OF ISSUE:

The proper application of article 11.5 of the collective agreement.

The grievor left a voice mail message on the Company's answering machine at approximately 7 a.m. on November 24, 2006, which was two hours prior to the commencement of his shift. The message was that he would not be reporting for work. The grievor followed up with a second voice mail message to the same Company answering machine approximately one hour later. Later the same morning, the Company was unable to reach the grievor by telephone.

When the grievor returned from his vacation, the Company conducted an interview and proceeded to assess 15 demerits for "failure to report for assigned duties".

The Union advanced a grievance arguing that the grievor had met his obligations under the collective agreement and had engaged in no misconduct. The Union requested that the demerits be removed.

The Company denied the grievance.

FOR THE UNION:

(SGD.) D. NEALE
VICE-PRESIDENT

FOR THE COMPANY:

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

There appeared on behalf of the Company:

M. D. Failes – Counsel, Toronto

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

And on behalf of the Union:

D. Neale – Vice-President, Toronto
R. Pagé – Staff Representative, Montreal

PRELIMINARY AWARD OF THE ARBITRATOR

This matter concerns the assessment of fifteen demerits against the grievor, Mr. Zagdanski, for allegedly having falsified a claim for sick leave for the period of one day. The grievor advised the Company that he was travelling to Cuba on holiday, commencing Saturday, November 25, 2006. By reason of information provided to it, the Employer subsequently came to believe that in fact Mr. Zagdanski departed on Friday, November 24, 2006 and that his claim of illness on that date was false.

To facilitate the hearing of this matter, scheduled to be heard on Wednesday, February 13, 2008, the Company seeks the production of documents, by an order to be made pursuant to the Arbitrator's authority under the **Canada Labour Code**. Specifically, it asks for pre-hearing production of the grievor's air ticket to Cuba on the date or dates in question and it further requests that the Arbitrator direct the grievor to bring his passport to the hearing as further possible evidence respecting his travel agenda.

The Arbitrator conducted a teleconference hearing with both parties on Monday, January 21, 2008. Having heard full representations of both sides the Arbitrator directed the Union to give pre-hearing production to the Company of a copy of the grievor's air ticket to Cuba and further directed that the Union produce at the hearing the grievor's

passport. The Arbitrator judged that in the circumstance of this dispute those documents are relevant and arguably probative of the main factual issue.

This Preliminary Award is to confirm, in written form, the order made verbally on Monday, January 21, 2008. The Union is therefore directed to provide to the Company, forthwith, a copy of the grievor's air ticket and to convey to the grievor the Arbitrator's direction that Mr. Zagdanski bring his passport to the hearing, or provide it to the Union, for the purposes of possible examination at the hearing of this matter. Obviously, any failure on the part of the grievor to cooperate will leave open to the Company the ability to argue that the Arbitrator should draw adverse inferences.

January 24, 2008

(signed) MICHEL G. PICHER
ARBITRATOR

This dispute was ultimately resolved between the parties and there was no further hearing was scheduled.