

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

CASE NO. 3755

Heard in Montreal, Tuesday, 12 May 2009

Concerning

CANPAR TRANSPORT LTD.

and

UNITED STEELWORKERS OF AMERICA (LOCAL 1976)

DISPUTE:

Congédiement de Norbert Rail, chauffeur livreur à Montréal pour accumulation de mauvais points.

JOINT STATEMENT OF ISSUE:

Le 2 juillet 2008 M. Rail a participé à une entrevue disciplinaire pour avoir quitter son travail sans prévenir le 18 janvier 2008. Il a reçu 10 mauvais points pour cet incident. Le 21 août 2008, il a participé à une autre entrevue disciplinaire pour ne pas avoir sécurisé son camion lors d'une livraison le 11 août 2008. Il a reçu 40 mauvais points pour cet incident. Monsieur Rail avait à son dossier disciplinaire 25 mauvais points. Le 15 septembre 2008, ayant accumulé 75 mauvais points, M. Rail a été congédié.

Le Syndicat a déposé un seul grief pour les incidents, s'étant entendu au préalable avec la compagnie pour n'en faire qu'un seul dossier. Le Syndicat a demandé à la Compagnie de remplacer le congédiement par une discipline alternative et a réclamé le salaire, l'ancienneté et les bénéfices perdu.

La Compagnie a refusé le grief.

FOR THE UNION:

(SGD.) RICHARD PAGÉ
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) PAUL D. MACLEOD
VICE-PRESIDENT - OPERATIONS

There appeared on behalf of the Company:

R. Dupuis	– Regional Manager, Quebec & Ottawa
P. D. MacLeod	– Vice-President, Operations, Toronto
D. Murray	– P&D Manager, Montreal
C. Mercier	– P&D Supervisor, Montreal

And on behalf of the Union:

P. Conlon	– Assistant to the President, Toronto
R. Pagé	– Staff Representative, Montreal
A. Therrion	– Recording Secretary, Montreal
N. Rail	– Grievor

AWARD OF THE ARBITRATOR

It does not appear disputed that the grievor's discipline stood at twenty-five demerits before the events giving rise to this grievance, a grievance in relation to the assessment of ten demerits for having left the workplace without authorization and forty demerits for the separate offence of the grievor, Mr. Norbert Rail, having left his truck unlocked during the course of a residential delivery.

With respect to the first issue, the grievor maintains that he did advise his supervisor, Mr. Dwayne Murray, that he was leaving the workplace. The recollection of Mr. Murray, who was in attendance at the hearing, does not support the grievor's assertion. Mr. Murray recalls that there was a dispute with respect to the grievor's workload, but not that there was any indication that he was leaving the workplace. On the whole the Arbitrator is inclined to accept the version of this incident offered by the Company. In the result the assessment of ten demerits should stand.

Greater concern arises, however, with the assessment of forty demerits for the grievor having failed to secure his truck. While the Union does not dispute that he was under an obligation to lock his truck during his delivery, its representative stresses that there are mitigating factors. Notably, he draws to the Arbitrator's attention that the delivery in question was at a home on a residential street, that the customer was at the door of the home waiting for Mr. Rail's delivery and that the grievor simply parked his truck and walked a short distance to the customer's front door, never placing himself in a position where he could not see his truck. While that does not relieve the grievor from liability to discipline, the Union submits that it does suggest something less than serious recklessness on his part.

It is common ground that this is the second offence assessed against Mr. Rail for having failed to secure his truck during a delivery. In June of 2007 he was assessed thirty demerits for a similar infraction. On that basis the Company suggests that the forty demerits assessed in the instant case was not inappropriate, relying in part upon the doubling principle which is contained in the Company's Policy Booklet and Instruction Manual.

This Office has previously commented that the assessment of twenty demerits appears to have been the pattern for first infractions in respect of leaving one's truck unsecured. On some occasions the Office has reduced the assessment of thirty demerits (see **CROA 1672**) and in some instances fifteen demerits were assessed (**CROA 1827** and **3146**). However, the general pattern appears to have been the assessment of twenty demerits (**CROA 1879, 2709, 2898** and **2971**).

There is a mitigating factor of some importance in the file at hand. The grievor has been employed by the Company since 1984. As an employee of almost twenty-five years' service he maintained a record virtually devoid of any important discipline until 2006. It does also not appear disputed that several years ago his life was disturbed by a condition for which he received successful treatment, assisted by a leave of absence accorded by the Company. In the Arbitrator's view, on the whole of the material before me, I consider that this is an appropriate case for a substitution of penalty in accordance with my discretion under the **Canada Labour Code**. While the Arbitrator can appreciate the Company's concerns with the recidivist aspect of the grievor having left his truck unsecured, I am of the view that the longevity and quality of his prior service does merit a second chance.

For these reasons the grievance is allowed, in part. The Arbitrator directs that the period between the grievor's discharge and his reinstatement be substituted as a suspension for his failure to secure his truck, and that he be reinstated into his employment forthwith without compensation or benefits, without loss of seniority and with his discipline to stand at thirty-five demerits.

May 19, 2009

(signed) MICHEL G. PICHER
ARBITRATOR