

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

CASE NO. 3885

Heard in Montreal, Tuesday, 13 April 2010

Concerning

CANPAR TRANSPORT LTD.

and

UNITED STEEL WORKERS (LOCAL 1976)

DISPUTE:

The issue of 20 demerit points to Mr. Michael Coire.

JOINT STATEMENT OF ISSUE:

On March 17, 18 & 19, 2009 the Company had an issue with Mr. Coire on "work and time reporting". On March 26, 2009 an interview was held by the Company with Mr. Coire to determine his involvement in the matter. On March 27, 2009, Mr. Coire received 20 demerits for the incidents on March 17, 18 and 19, 2009.

Time limits were protected on this file. The Union grieved the discipline assessed on November 12, 2009 stating the discipline received was not given within the principles of progressive discipline and that mitigating factors to the case were not taken into consideration.

The Union requested the discipline be stricken from Mr. Coire's file and that his record be made whole.

The Company denied the Union's request November 26, 2009.

**FOR THE UNION:
(SGD.) D. NEALE
VICE-PRESIDENT**

**FOR THE COMPANY:
(SGD.) P. D. MACLEOD
VICE-PRESIDENT, OPERATIONS**

AWARD OF THE ARBITRATOR
based on the parties' written submissions

Upon a review of the material filed the Arbitrator has some difficulty with the fundamental position advanced by the Union. While its material makes repeated reference to an alleged practice whereby Company officials in Ottawa have knowingly tolerated drivers scanning pick-up numbers although they did not in fact physically attend at the customer's place of business, there is no meaningful evidence to that effect placed before the Arbitrator, whether in the form of statements from other employees or otherwise. Conversely, it is not disputed that the grievor did not follow the Company's published rule which would prohibit the scanning of a parcel pick-up call without actually going to the customer's location. Mr. Coire plainly violated that rule.

The Arbitrator does not consider it necessary to consider the grievor's motives. While the Company suggests that the grievor was attempting to conceal an extension of his coffee break by creating the appearance of having attended at a customer's location, there is no evidence before me to sustain that interpretation or to give any insight into the grievor's thinking at the time. The fact remains, he did violate the rule. The only issue of substance is the appropriate measure of discipline.

In the Arbitrator's view one-third of the distance to discharge is a severe measure of discipline. In the case at hand a mitigating factor is that Mr. Croire's disciplinary record was clear at the time of the incident. In all of the circumstances I am satisfied that the assessment of ten demerits would have sufficed to recall to him the importance of observing the Company's rules with respect to scanning.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor's record be corrected to reflect the assessment of ten demerits for his failure to observe the Company's rules in respect of scanning pick-ups in the period of March 17 to 19, 2009.

April 19, 2010

(signed) MICHEL G. PICHER
ARBITRATOR