

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

CASE NO. 4103

Heard in Montreal, Thursday, 12 April 2012

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

MAINTENANCE OF WAY EMPLOYEES DIVISION

EX PARTE

DISPUTE:

Dismissal of Mr. D. Thompson.

UNION'S STATEMENT OF ISSUE:

By way of Form 104 dated October 13, 2011, the grievor, Mr. D. Thompson, was dismissed from Company service for allegedly driving a Company vehicle with a suspended driver's licence (between June 26 and 29, 2011), failing to notify the Company of the suspension, and allegedly falsifying his qualifications during the bidding process for Bulletin 2011-01. A grievance was filed.

The Union contends that: (1) Mitigating factors existed that should have served to avoid the discipline assessed; (2) The grievor's dismissal was unfair and unwarranted in the circumstances.

The Union requests that the grievor be reinstated into Company service forthwith without loss of seniority and with compensation for all wages and benefits lost as a result of this matter.

The Company denies the Union's contentions and declines the Union's request.

**FOR THE UNION:
(SGD.) WM. BREHL
PRESIDENT**

There appeared on behalf of the Company:

M. Chernenkoff – Labour Relations Officer, Calgary
M. Moran – Manager, Labour Relations, Calgary

There appeared on behalf of the Union:

Wm. Brehl – President, Ottawa
D. W. Brown – Counsel, Ottawa
D. Thompson – Grievor

AWARD OF THE ARBITRATOR

The record confirms that the grievor's driver's licence was suspended in April of 2010 for a period of one year, apparently by reason of his conviction of dangerous driving. While that suspension was intended to be for one year, during the course of that year, on March 12, 2011 Mr. Thompson received a second overlapping suspension based on the accumulation of demerits on his record. The additional suspension extended to August 3, 2011.

The grievor claims that he was not aware of the second, overlapping suspension. He submits that it was on that basis, in the belief that he had a valid driver's licence, that he accepted to drive a Company fuel truck on a relief basis between June 26 and June 29, 2011. In fact that assignment involved the grievor operating a Company truck on public roads without a valid driver's licence.

The essential position of the Company is that the grievor has conducted himself in such a fashion as to violate the bond of trust essential to the employment relationship. Its representatives stress that initially, although he was aware of his obligation to do so, the grievor did not notify the Company of the change in his driving

status when his licence was suspended on April 8, 2010. The Company also challenges the grievor's assertion that he was not aware of the additional suspension of his licence effective March 12, 2011 when he accepted the driving assignment on the fuel truck for several days in June of that year. The Company stresses that the grievor falsely indicated, in his bid on Initial Gang Bulletin 2011-01, that he had a valid driver's licence, and rejects his explanation that it was his view that his licence would be restored by the time the assignments which would involve driving a truck might become available, presumably after April 8, 2011. The Company's representatives also stress that the established practice in Ontario, where the grievor resides, is to notify a driver of the suspension of his or her licence by letter. The Company maintains that the grievor would have received a letter advising him of the overlapping suspension for the accumulation of demerits March 12, 2011.

In the Arbitrator's view, after a careful examination of the facts, there is substantial reason for concern over the grievor's honesty in relation to these events. If Mr. Thompson is to be believed, he was simply unaware that the accumulation of driving demerits had resulted in a further suspension of his licence after March 12, 2011. With respect, I find that assertion impossible to square with the grievor's own account of the facts. During the course his disciplinary investigation Mr. Thompson stated that he had specifically retained a lawyer to represent him in court to deal with the pending suspension for the accumulation of demerits. In fact the grievor relates that his lawyer did not show up in court and that he did not attend himself. In that regard he provided the following answer: "My lawyer was supposed to show up. He didn't nor did

I. That's why I lost my licence to August 18, 2011." I find incredible the grievor's explanation that he believed that because neither he nor his lawyer appeared in court to defend the further suspension of his licence, that in fact his licence was not suspended and that it was effectively reinstated on April 8, 2011. I am driven to the unfortunate conclusion that the grievor deliberately concealed from the Company the original suspension of his licence and that he knew, or reasonably should have known, that his licence continued to be suspended beyond April 8, 2011 and that he had no valid driver's licence when he accepted the fuel truck driving assignment in June of 2011. In my view, it defies all credibility to accept the grievor's explanation that because his lawyer did not appear in court with respect to the additional suspension of his licence on March 12, 2011, and he did not appear, and that he could not reach his lawyer after the fact that somehow his licence was not suspended on that occasion. I am satisfied that it was, that the grievor knew it was and that in fact, in accordance with normal procedure, he had received a letter to that effect.

In the result I am compelled to the regrettable conclusion that the Company is correct in its view that the grievor has effectively destroyed the bond of trust essential to the employment relationship by concealing information and by providing false information with respect to the status of his driver's licence and his knowledge in relation to that status, up to and including the time of his disciplinary investigation. In my view, in light of these conclusions, this is not an appropriate case for a substitution of penalty.

For the foregoing reasons the grievance is dismissed.

April 16, 2012

(signed) MICHEL G. PICHER

ARBITRATOR