

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4194**

Heard in Montreal, April 9, 2013

Concerning

CANPAR TRANSPORT L.P.

And

UNITED STEELWORKERS TC LOCAL 1976

DISPUTE:

The dismissal of Canpar Ottawa employee Mr. Steven Patterson.

JOINT STATEMENT OF ISSUE:

On October 29, 2012 Mr. Patterson was given a Notice from the Company to appear at an interview November 01, 2012 on the matter of "willful theft of Canpar money". The Interview was held on November 01, 2012. At the completion of the investigation on the aforementioned matter, on November 05, 2012 by way of letter, the Company terminated Mr. Patterson's employment effective immediately. The Union grieved the dismissal of Mr. Patterson December 03, 2012 at Step 2 of the grievance procedure as per the Collective Agreement. The Union requested the termination of Mr. Patterson's employment at Canpar be rescinded and that he be immediately reinstated with full compensation, including lost wages/benefits and seniority. On December 12, 2012 the Company denied the Union's request.

FOR THE UNION:
(SGD.) R. Marleau
Vice-President

FOR THE COMPANY:
(SGD.) M. O'Neill
Vice-President, Operations

There appeared on behalf of the Company:

M. O'Neill	– Vice President Operations, Toronto
Y. Heroux	– Terminal Manager, Ottawa
N. Nicolai	– Terminal Manager, Montreal

There appeared on behalf of the Union:

R. Marleau	– Vice President District 6, TC Local 1976, North Bay
S. Patterson	– Grievor, Ottawa

AWARD OF THE ARBITRATOR

The grievor was discharged for what the Company characterizes as the theft of its money. The Union submits that the facts disclose something different.

Mr. Patterson was at all material times a P & D driver employed out of the Ottawa terminal. His regular assignment involved deliveries in the Cornwall area, which caused him to travel daily between Ottawa and Cornwall via highway 417. The record confirms that he regularly fueled at a Petro Canada station located immediately south of highway 417 in Casselman, Ontario. At the Petro Canada station located there he was able to avail himself of diesel fuel pumps, purchasing fuel on a Company credit card.

It does not appear disputed that the Petro Canada station at Casselman tended to charge a higher price for its fuel. The unchallenged submission of the Company is that a station at another location sold fuel for a dollar twenty four per litre, while the Petro Canada station frequented by the grievor charged one dollar and thirty nine cents per litre. Significantly, the Petro Canada station in Casselman also granted a five cents per litre cash rebate. The Union's representative characterises that arrangement as a loyalty program, not dissimilar from the awarding of Petro Points to regular customers.

Following its investigation the Company concluded that the grievor was improperly receiving cash back on fuel purchases, money which should have rightfully been given to the employer. In its Notice of Discharge dated November 5, 2012 its Ottawa terminal Manager states, in part :

Following our investigation on Thursday November 1, 2012, concerning wilful theft of Canpar money we've come to the following decision.

We are terminating your employment at Canpar ...

The issue before me is whether in fact the grievor engaged in the knowing and fraudulent misdirection of Company funds. The Company's representative acknowledged candidly that it is not in a position to know with any certainty what monies the grievor may have realized from the cash rebate program from the Petro Can station in Casselman over what it estimates is a fourteen month period he purchased fuel at that location. It appears that the grievor was under the impression that the cash rebate was attributable only to transactions made in cash or by the use of a debit card. His unchallenged representation is that over the entire period he received no more than thirty dollars in actual cash rebates. It seems that a new person assigned to work in the cash kiosk of the gas station gave him actual cash on some three or four occasions which, by his estimate, would have totaled no more than twenty-five to thirty dollars, all together.

During the course of the hearing the Company's representative stressed to the Arbitrator that, by the employer's calculations, the grievor's choice of gas station in Casselman, where fuel was obviously available at a substantially higher price per litre, in fact might have cost the Company something in the order of \$1,680.00 additional in fuel costs for the grievor's vehicle over the period of time here under consideration.

After a careful review of the evidence I am satisfied that the grievor did leave himself open to a serious degree of discipline. However great or small the amount, it was not open to him to receive any cash rebates from purchases made using the Company's credit card. Additionally, I find it difficult to disagree with the employer's representative who suggests

that the grievor's choice of gas station was in fact injurious to his employer given the obviously higher price of fuel at that location. The real question is whether the grievor's actions were such as to effectively sever the bond of trust between himself and his employer.

After careful consideration I am compelled to answer that question in the negative. Bearing in mind that the Company bears the burden of proof, the evidence before me simply does not suggest that Mr. Patterson engaged in a conscious or sustained scheme to pocket substantial amounts of money in the form of cash rebates for the purchase of fuel. I am satisfied that he did, however, cross the line when he accepted cash, keeping for himself monies which should have been properly channeled to his employer. In my view he did so more out of an error of judgement than conscious dishonesty. I am not persuaded that he cannot be returned to trustworthy service with his employer.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without compensation for his wages and benefits lost. The period between his termination and reinstatement shall be recorded as a suspension for the improper handling of his company credit card, and his failure to purchase fuel at the most reasonable available prices.

April 15, 2013

MICHEL G. PICHER
ARBITRATOR