

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4210**

Heard in Montreal, May 16, 2013

Concerning

CANADIAN NATIONAL TRANSPORTATION LIMITED

And

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND
GENERAL WORKERS UNION OF CANADA (CAW-CANADA)**

DISPUTE:

Concerning the dismissal of Brampton Ontario Owner Operator Vishal Sharda for alleged "serious misconduct and gross violation of the Standard Contract".

UNION'S ExPARTE STATEMENT OF ISSUE:

Mr. Sharda was investigation on July 30, 2012 regarding a motor vehicle accident in Cambridge Ontario at Highway 401 and Town Line Road. He was subsequently discharged for serious misconduct and gross violation of the Standard Contract. It is the Union's position that there is no evidence to support the Company's position and that the Owner Operator committed serious misconduct or a gross violation of the Standard Contract and the Company failed to meet its burden. The Union further submitted that the Grievor was treated differently than other contractors who were involved in the some 23 accidents that took place within the terminal authority in 2012. Finally the discipline is extreme in the circumstances and the investigation process was flowed to the determent of the grievor.

The Company disagrees with the Union's position.

The Union requests that the grievor be reinstated without loss of wages, benefits and seniority.

**FOR THE UNION:
(SGD.) R. J. Fitzgerald
National Representative**

**FOR THE COMPANY:
(SGD.)**

There appeared on behalf of the Company:

J. Darby	– Labour Relations Associate, Concord
D. S. Fisher	– Senior Director Labour Relations and Strategy, Montreal
M. Peterson	– CNTL Manager, Truck Operations, Concord

R. Basso – CNTL Truck Operations Supervisor, Concord
R. Campbell – Manager Labour Relations, Winnipeg

There appeared on behalf of the Union:

R. J. Fitzgerald – National Representative, Toronto
B. Kennedy – President, Edmonton
W. Gajoa – Regional Representative, Toronto
J. White – Regional Representative, Toronto
V. Sharda – Grievor, Collingwood

AWARD OF THE ARBITRATOR

On Monday June 25, 2012 the grievor was operating his tractor trailer, pulling an empty container and chassis from Mississauga to Leamington Ontario. Shortly after leaving the Malport yard at approximately 09:20, the grievor's truck veered off highway 401 into the ditch onto the north side of the highway proceeding up the grassy hill beyond the ditch. The tractor and its trailer and chassis rolled over, landing on the left side. The mishap caused substantial damage to the equipment as well as injuries to the grievor who was subsequently hospitalized. The cost to the Company is estimated at an excess of seventy-three thousand dollars (\$73,000.00).

The Company's theory is that the grievor fell asleep at the wheel and allowed his unit to stray to the right, through the ditch and onto the adjacent grassy area where it finally tipped onto its side. Its conclusions in that regard are substantially supported by an analysis of the event done after the fact by Mr. Dalton Brown, a collision investigation expert said to be specialized in collision reconstruction for more than twenty-two years, a substantial part of which involved his employment with the Ontario Provincial Police. Mr. Brown's report notes that there are no signs of any attempt at braking at any point

while the truck was either on the road, on the shoulder or in the initial stages of moving through the ditch and up onto the grassy hill. It is only once the tractor had reached a certain point on the slope that there is an indication on the ground of a brake application having been made. Those objective facts, coupled with the police report which noted that the driver's condition was described as "fatigue" caused Mr. Brown to conclude that in fact the grievor fell asleep at the wheel, which caused his tractor and trailer to drive through the ditch and up a substantial portion of the hill before any brake application was made.

The grievor relates a different account. He states that as he was driving he became distracted by a car travelling on his left, whose driver appears to have been talking on the telephone. He submits that observing that driver, coupled with high wind caused him to be pushed off the highway and to lose control.

Upon a review of the materials filed, the Arbitrator has substantial difficulty with the grievor's account of events. At a minimum, if the grievor's account is to be believed, one would expect to see an effort at braking, possibly leaving tire marks on the roadway or at least the shoulder prior to leaving the highway. As stressed in the report of Mr. Brown, all objective evidence would indicate that there was simply no brake application made until the vehicle found itself well into the grassy slope adjacent to the highway. Additionally, the meteorological records placed in evidence do not sustain the grievor's explanation as regard to the wind. While it is true that there were high winds on the day in question, the direction of the wind at the point at which the grievor's truck left the

highway was in fact such as to push his vehicle in the opposite direction from the ditch on the right hand side of the road.

On a review of all of the evidence, including the grievor's account, I am compelled to the regrettable conclusion that Mr. Sharda has not been candid and honest in his version of what occurred on June 25, 2012. I am satisfied, on the balance of probabilities, that he did fall asleep at the wheel which caused his tractor and trailer to leave the highway and to eventually tip over on the adjacent slope. While the Union points to a number of other at fault accidents involving other drivers which did not result in their discharge, I am satisfied that the Company was correct in its assessment of the gravity of the instant case, not only from the standpoint of seriousness of the accident which occurred, but of the reliability of the grievor's account of events and his arguable attempt to conceal the true facts. At a minimum, I cannot avoid the conclusion that the bond of trust between the grievor and his employer has been irreparably severed.

For all of these reasons the grievance must be dismissed.

May 17, 2013

MICHEL G. PICHER
ARBITRATOR