

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4243

Heard in Montreal, October 8, 2013

Concerning

CANPAR TRANSPORT L. P.

And

UNITED STEELWORKERS – TC LOCAL 1976

DISPUTE:

The dismissal of Canpar Belleville employee Mr. Mark Cleary.

JOINT STATEMENT OF ISSUE:

On April 02, 2013 Mr. Cleary was given a Notice of interview from the Company to appear at an Interview April 04, 2013 on the matter of a "backing accident". On April 04, 2013 the above mentioned Interview took place. After the completion of their Investigation on the aforementioned matter, on April 08, 2013 by way of letter the Company terminated Mr. Cleary's employment.

The Union grieved the dismissal of Mr. Cleary April 23, 2013 at Step 2 of the grievance procedure as per the Collective Agreement. The Union requested the termination of Mr. Cleary's employment at Canpar be rescinded and that he be immediately reinstated with full compensation, including lost wages/benefits and seniority. On June 20, 2013 the Company denied the Union's request.

FOR THE UNION:
(SGD.) D. Neale

FOR THE COMPANY:
(SGD.) M. O'Neill

There appeared on behalf of the Company:

M. J. O'Neill	– VP of Operations, Toronto
J. Pepper	– Supervisor, Belleville

There appeared on behalf of the Union:

D. Neale	– VP, Hamilton
N. Lapointe	– Recording Secretary, Valleyfield
M. Cleary	– Grievor, Belleville

AWARD OF THE ARBITRATOR

This grievance concerns Mr. Cleary's termination on April 8, 2013. Mr. Cleary was a driver representative with the Company. He was hired in January 1997. As a result of an accident that occurred on April 1, 2013, assessed at 15 demerit points, in conjunction with the 55 demerit points on Mr. Cleary's record at the time, the Company terminated Mr. Cleary.

The facts are not in dispute. Prior to the commencement of his shift on April 1, 2013, Mr. Cleary phoned his immediate supervisor, Mr. Pepper, to let him know that he was feeling unwell and that he would not be in that day. At the time of the call, Mr. Pepper was on the way to work. He told Mr. Cleary that he would see what the volume of freight to be delivered was when he got into work to see if he could give Mr. Cleary the day off. As it turned out the freight volume proved to be heavy that day. Mr. Pepper told Mr. Cleary that he could not take the day off. Mr. Cleary reported to work. Upon arrival, Mr. Pepper thanked him for coming in sick. As Mr. Cleary struggled to unload the freight from the trailer shortly after his arrival, Mr. Pepper took him off that duty using words to the effect of "you looked like you were dying in there."

Mr. Cleary continued with his duties. At approximately 10:00 am Mr. Cleary arrived at the consignee's address on the rural route assigned to him. Mr. Cleary did not park his vehicle on the road, put the flashers on, and carry the package to the door as was expected of him. Instead, he backed into the driveway, which was a long one, and in doing so misjudged the angle needed to clear one of the two brick posts on either

side of the driveway. The impact caused mortar damage to one of the posts. Mr. Cleary immediately reported the accident to Mr. Pepper and filled in an accident report at the end of the day.

Mr. Cleary's disciplinary record is not insignificant. As of August 22, 2012, Mr. Cleary had accumulated 55 demerit points. On October 23, 2012, Mr. Cleary missed a pick-up and was given a 2-day suspension in lieu of demerits or termination given his previous service occurrence issues. On November 27, 2012, Mr. Cleary received a 5-day suspension in lieu of demerits or termination for delivering a package without a signature. On January 3, 2013, Mr. Cleary missed another pick-up and was terminated. On February 2, 2013, by agreement between the parties, Mr. Cleary was reinstated to his position on a last chance agreement.

I am not unsympathetic to the Company's position. However, there are mitigating circumstances, which are significant in this case. Mr. Cleary was a long-term employee. More significantly, he was sick on the day in question. Nevertheless he came into work in the circumstances described above. Mr. Cleary did not park his vehicle and proceed to walk up the drive way as he should have. Nevertheless, the preventable minor accident caused by Mr. Cleary's miscalculation of the degree of angle required to clear the two brick posts is worthy of some discipline. In all the circumstances, however, including the fact at no time over the 15 years Mr. Cleary has worked for the company, has he been given demerit points for an accident, lead me to conclude that this is an appropriate case for reinstatement, albeit without compensation.

The grievance is therefore allowed in part. Mr. Cleary is to be reinstated to his employment forthwith, without loss of seniority but without compensation for any wages or benefits lost.

October 14, 2013



CHRISTINE SCHMIDT
ARBITRATOR