

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4260

Heard in Calgary, November 13, 2013

Concerning

CANADIAN NATIONAL TRANSPORTATION LIMITED

And

UNIFOR

DISPUTE:

Discharge of Owner Operator Gurjit Brar for alleged serious act of misconduct or gross violation, the Standard Contract between this Contractor and CNTL was terminated effective April 9, 2013.

UNION'S EXPARTE STATEMENT OF ISSUE:

On March 17, 2013, the Grievor was driving on highway 16 in British Columbia during a heavy snowstorm. While stopping to fix his lights, he was told by a tow truck driver that just up the highway there were three semi-trucks spun out and fully blocking the highway. He advised the Grievor to turn around and go to the rest area (10 minutes back west). While attempting get up a hill in the snowstorm, the Grievor's truck lost wheel traction and slid back down the hill and ended up at the bottom in a jackknifed position on the highway. With the aid of a tow truck, he got up the hill and proceeded to the rest stop. There was no damage to the equipment or cargo and no damage to the highway property.

It is the Company's position that the Grievor failed to report the accident and that the contractor lost control of his tractor & trailer which resulted in Hwy 16 being closed at or near McBride, BC.

It is the Union's position that the matter was more typically an inclement weather incident than an accident, that the Grievor acted in a reasonable and responsible manner at all times and did not violate the terms of the standard contract and that the matter was reported to Company. We further contend that the Company failed to consider the mitigating factors and failed to satisfy its burden. Finally, that discharge was not the appropriate response in this case, The Union sought reinstatement and compensation for all losses as outlined in the Step three grievance.

The Company denied the Union's request.

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

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

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| R. Campbell | – Manager Labour Relations, Winnipeg |
| B. Laidlaw | – Manager Labour Relations, Winnipeg |
| M. Peterson | – Manager Truck Operations, Toronto |
| G. Lefler | – Supervisor Truck Operations, Edmonton |
| J. Hagen | – Supervisor Truck Operations, Calgary |

There appeared on behalf of the Union:

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| R. J. Fitzgerald | – Staff Representative, Toronto |
| W. Gajda | – Regional Representative, Mississauga |
| G. Brar | – Grievor, Calgary |

AWARD OF THE ARBITRATOR

The facts pertinent to this grievance concern events which occurred on highway 16 between Prince George and McBride B.C. on the late night of March 17, 2013. While there is some disagreement between the parties as to the precise weather conditions at the time, there is no dispute that the grievor tried and failed to climb a hill with his tractor and trailer. His vehicle slid backwards and jack-knifed at the bottom of the hill, effectively blocking both lanes of highway 16. There appears to be no dispute that he did not call his Driver Manager at the time of the incident to advise him of the situation, nor did he call anyone else in the Company's operations. It appears that he was eventually freed from his position by a tow truck and returned to Calgary, arriving some fourteen hours after the incident. He did not at that time advise Driver Manager John Hagen of what occurred. While there is some suggestion that Mr. Hagen may not have been present, it is also clear that the grievor did not communicate the facts of the incident to any other manager on duty.

The record confirms that it is only after the Company received an invoice from Thunder Valley Towing, the service which rescued the grievor, that Driver Manager

Hagen contacted Mr. Brar to inquire as to what happened. It was then that the grievor disclosed to Mr. Hagen, for the first time, that his trailer had slid and jack-knifed, blocking highway 16 west of McBride for a period of in excess of two hours.

It is does not appear disputed that the grievor was subject to the Company's Collision Response Policy. The first obligation is to notify dispatch, directing them to notify police, if appropriate, and also to notify the driver's manager of safety and compliance. The driver is also instructed to use a disposable camera to take photos of the situation.

As is evident from the record, the grievor did none of the foregoing. He maintains that his blackberry, which presumably could have been used as a camera, was frozen at the time and not functioning.

The Arbitrator has substantial difficulty with the grievor's claim that he was unable to call at the time of the incident. There appears to be little doubt but that he was blocking traffic for a substantial period of time. I find it difficult to understand how he could not have used another telephone to make the call. It does not appear disputed that a telephone was used to call a tow truck to assist him.

In the Arbitrator's view, of greater concern is the fact that the grievor made no meaningful report of the incident to the Company's Manager, including Driver Manager John Hagen, following his return to Calgary. I have some difficulty with the suggestion in

the grievor's account of events that he had attempted to contact Mr. Hagen but was told that he must make an appointment. In the result, it appears that it was only some considerable time later, following the arrival of the tow truck invoice, that management was alerted to the fact that an incident had occurred west of McBride on the night of March 17, 2013. That was after a lapse of some three days from the time of the incident.

In the Arbitrator's view the Company was understandably concerned about what it considered a possible attempt on the part of the grievor to conceal the incident in hopes that it might not in fact emerge. Quite apart from that speculation, the fact remains clear on the evidence before the Arbitrator that the grievor was under an obligation to report the incident, clearly both at the time it occurred and upon his return to Calgary, and to make a report to the appropriate management officer. He clearly failed to do so.

The record before me confirms that the grievor had previously been involved in a serious accident, as a result of which he was disciplined. It is notable that Article 8.2 of the Collective Agreement contemplates that serious acts of misconduct can justify the termination of the standard contract which governs owner operators, bypassing the provisions of progressive discipline established in respect of first, second, and third occurrences. I am satisfied that this was such an incident.

Very simply, on March 17, 2013 the grievor's truck jack-knifed and blocked a significant highway for some two and half hours. Three days later, that incident was still unknown to Company management, and became disclosed only by reason of the tendering of a tow truck invoice. By any account, this unfolding of events is plainly inconsistent with the grievor's obligations of fidelity and candour to the Company and, more specifically, its policy with respect to the actions to be taken in the event of any accident. In light of the grievor's prior discipline, Mr. Brar obviously made himself liable to a significant measure of discipline.

In the Arbitrator's view the Company's decision with respect to the termination of his contract should not be disturbed. The grievance must therefore be dismissed.

November 18, 2013

MICHEL G. PICHER
ARBITRATOR