

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1815

Heard at Montreal, Thursday, 14 July 1988

Concerning

BULK SYSTEMS
(CP EXPRESS & TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Appeal of the dismissal and termination of services of Trainman T. S. Dallyn of Prince George, B.C., November 21, 1986.

UNION'S STATEMENT OF ISSUE:

Employee Daniel Capustinsky was assessed 25 demerits on July 30, 1987, for an incident that occurred July 11, 1987. Employee Daniel Capustinsky grieved the demerits on the grounds the Company did not hold the investigation within 14 calendar days following the date the incident became known to the employer. The Union grieved the assessing of the 25 demerits and requested they be expunged from his record.

The Company refused to comply with the Union's request.

FOR THE BROTHERHOOD:

(SGD) J. J. BOYCE
General Chairman
System Board of Adjustment 517

There appeared on behalf of the Company:

M. D. Failes	- Counsel, Toronto
B. D. Neill	- Director, Labour Relations, CPET, Toronto
M. M. Fleguel	- Witness
J. W. McColgan	- Observer

And on behalf of the Union:

D. Wray	- Counsel, Toronto
J. J. Boyce	- General Chairman, Toronto

M. Gauthier - General Chairman, Montreal
D. Capustinsky - Grievor

AWARD OF THE ARBITRATOR

The Union admits that the grievor was negligent in the performance of his duties on July 11, 1987. The evidence discloses that he erroneously mixed gasoline and diesel fuel within one of the compartments of his bulk fuel truck when, by the exercise of normal care and diligence, he could have avoided doing so. His error resulted in a loss to the Company costing some \$1,600.00.

The first issue raised by the Union is the alleged non-compliance by the Company with the requirement within the Collective Agreement that the investigation of the grievor be held within fourteen days following the date the incident became known to the Company. In the Arbitrator's view, on the evidence before me, that objection is without merit. I am satisfied, having regard to the evidence of Mr. Morley Fleguel, Acting Terminal Manager at the time in question, that he was not made aware of the incident which occurred on the afternoon of Saturday, July 11, until the morning of Monday, July 13, 1987, when he first returned to work after the weekend. Although Mr. Fluguel was present at the terminal for a brief time in the early part of Saturday, he was not there after the occurrence which gives rise to this grievance nor, notwithstanding the grievor's belief to the contrary, is there any substantial evidence that he was made aware of any problem on that day.

I turn to consider the issue of the appropriate measure of discipline in the circumstances. The grievor is not a long term employee, having commenced service on August 1, 1986. At the time of the incident of July 11, 1987 he had been subject to discipline on two prior occasions: on December 6, 1986 he was assessed fifteen demerits for a speeding offense and on March 13, 1987 he received ten demerits for causing spillage. As each of these infractions, including the incident under consideration, involved a degree of carelessness on the part of the grievor, a relatively junior employee, general principles of progressive discipline would support a relatively serious disciplinary penalty to bring to the grievor's attention the need to exercise greater care. In the circumstances I am not prepared to conclude that the assessment of twenty-five demerits was not within the appropriate range of disciplinary response.

For these reasons the grievance must be dismissed.

July 15, 1988

(SGD) MICHEL G. PICHER
ARBITRATOR