CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1816

Heard at Montreal, Thursday, 14 July 1988

Concerning

BULK SYSTEMS
(CP EXPRESS & TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The assessing of 15 demerits to employee D. Capustinsky, Bulk Systems, Ottawa, Ontario, for a vehicle accident he was involved in on February 10, 1988, which resulted in his discharge.

JOINT STATEMENT OF ISSUE:

On February 10, 1988, employee D. Capustinsky was involved in a backing up accident and was assessed 15 demerits which led to his accumulation of 60 demerits, and consequently his dismissal.

The Union contends the assessing of 15 demerits was excessive and requested he be reinstated with full compensation and seniority.

The Company denied the Union's request.

FOR THE UNION:	FOR THE COMPANY:
(Sgd) J. J. BOYCE General Chairman System Board of Adjustment 517	(Sgd) B. D. NEILL Director, Labour Relations

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 material establishes that the grievor was involved in an accident while backing his fuel truck at a gas station. It appears that he struck the rear end of a passenger vehicle which had moved in behind his tractor-trailer while the passenger vehicle was exiting the gas station and the grievor was in the process of backing up his tractor and trailer, which was in a slightly jackknifed position. The accident was plainly minor in degree with no damage to the Company's trailer and only slight damage to the rear of the passenger car, with some $350.00 in damage resulting.

Because of prior disciplinary infractions the grievor's record stood at fifty demerits at the time of the accident. In a year and a half of service to the Company, however, he had never before been involved in an accident. While accidents are plainly a serious concern to the Company, and the Arbitrator in no way condones the grievor's error in the instant case, it appears to the Arbitrator that there are mitigating circumstances which indicate that this is an appropriate case to exercise the Arbitrator's discretion to substitute a penalty less serious than discharge. Among these is the fact that the accident in question can be fairly characterized as more of a minor mishap resulting from a momentary error of judgement. In this regard the Arbitrator notes that the description of the accident reveals that the vehicle in question was virtually concealed from Mr. Capustinsky's view as he was backing his tractor and trailer. The impact was slight, and the economic loss relatively minor. In light of the fact that his entire prior service with the Company was accident free, I am satisfied that the interests of the Company and the grievor will be appropriately served if he is reinstated into his employment, without compensation or benefits, without loss of seniority, with his disciplinary record to stand a fifty demerits, and I so order.

I remain seized of this matter in the event of any dispute in respect of implementation.

July 15, 1988 (SGD) MICHEL G. PICHER
ARBITRATOR