

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1817

Heard at Montreal, Thursday, 14 July 1988

Concerning

BULK SYSTEMS  
(CP EXPRESS & TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The assessing of 60 demerits on Bulk Systems employee Pierre Bernier, Montreal, Quebec, for incident of January 21, 1988.

JOINT STATEMENT OF ISSUE:

On January 21, 1988, employee P. Bernier reported for work at 4:30 a.m. Instructions were left for him to proceed to Cornwall with a load of battery acid. It was also noted the vehicle had to be refueled. The grievor claims he was unable to refuel at a Petro Canada due to not having the code numbers and he proceeded on with the intention of refueling with his own credit card. Unfortunately, he ran out of gas before reaching another station.

The Company assessed 60 demerits to employee P. Bernier for:

- 1.) leaving his truck of dangerous goods unattended;
- 2.) not completing his shift and leaving without authorization.

The Union maintains employee P. Bernier took every means at his disposal to secure the equipment, and further, advised the Company of the action he had taken. The Union requested the demerits issued be taken off his record, and he be reinstated with full compensation and seniority.

The Union's request was denied by the Company.

FOR THE UNION:

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

FOR THE COMPANY:

(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. Cabana	- 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
P. Bernier	- Grievor

#### AWARD OF THE ARBITRATOR

The Arbitrator accepts the position of the Company that both leaving a truckload of dangerous goods unattended and leaving work without authorization are serious infractions deserving of a commensurate degree of discipline. In the instant case, however, there are mitigating factors which raise questions as to the appropriateness of Mr. Bernier's discharge.

The grievor reported for work at or about 4:30 a.m. on January 21, 1988. Being alone at the terminal he picked up written instructions to drive a truck loaded with sulphuric acid from the Dorval terminal to an industrial client in Cornwall. There was, however, very little fuel in the truck and it became obvious to Mr. Bernier that he must fill his truck's tank with diesel fuel as soon as possible. At the nearest Petro-Canada station on his route Mr. Bernier was unable to make use of its diesel fuel pump because it was not on open service and he could not remember the specific access code assigned to him when he was issued a Company Petro-Canada credit card. This would have allowed him to use the pump, much like a consumer's use of a computerized bank machine, even though the pump was closed. It is not disputed that he had made little or no use of the code number in the previous months, and his failure to remember it is not raised by the Company as a serious failure on his part. The grievor therefore decided to proceed onwards, with the intention of using his own personal credit card to purchase fuel at the first available opportunity. At 5:00 a.m. on a January morning a limited number of gas stations were open and available to him. Shortly after leaving the Petro-Canada station the grievor ran out of fuel in Ste Anne de Bellevue. He stopped his truck in front of the Veterans' Hospital and, using the guardhouse, telephoned his dispatcher at home to report what had transpired.

There is no dispute that the grievor was angry when he telephoned Dispatcher Marcel Cabana. The temperature was close to minus 30 Celsius, and the grievor felt that the Company should not have placed him in a position to have to leave the terminal with so little fuel at an hour when it would be difficult to fill up his vehicle. Needless to say being stranded in the cold and facing a delay of several hours while awaiting help was not a pleasant prospect for the grievor. According to Mr. Bernier, the hospital guard indicated to him that the space in the guardhouse would be too confined for both of them over an extended period of time.

By both his own account and Mr. Cabana's, Mr. Bernier was extremely angry and aggressive with his dispatcher on the telephone. While the precise content of the conversation is not recalled with any precision, Mr. Cabana relates that he told Mr. Bernier to stay with the truck, and that he would dispatch a tow truck to the scene. According to Mr. Cabana as he completed that instruction his bedroom telephone accidentally disconnected from its wall jack and the conversation was cut off. Mr. Bernier's recollection is different. He cannot remember being instructed by Mr. Cabana to stay with the truck, and testified that it was his belief that Mr. Cabana had deliberately hung up the phone on him, presumably as a response to the grievor's hostile tone of voice. In the circumstances Mr. Bernier states that he opted to call a taxi and return to the terminal office, which he did. It is not disputed that he left the documentation for the truck in the terminal office which had not yet opened for business, with a note explaining the location of the truck, and went home. According to the grievor's account he did leave instructions with the keeper of the hospital guardhouse to "keep an eye" on the truck parked in front of it, and provided him with an emergency number to call in the event of any mishap.

In the Arbitrator's view the substance of the Company's case with respect to the errors committed by Mr. Bernier is made out. As a carrier of dangerous goods, he was under an obligation to remain with his cargo at all times. It is far from clear to the Arbitrator that Mr. Bernier could not have sought more forcefully to remain in the hospital guardhouse, or failing that, to have summoned police assistance to ensure an adequate watch of his vehicle. It also appears to the Arbitrator that he failed to leave proper documentation with the truck when he decided to return to the Dorval terminal, contrary to the requirements of the Transportation of Dangerous Goods Act Regulations. (S.O.R./85-77 as am. by S.O.R./85-609)

The sole issue is the appropriate measure of discipline in these circumstances. The Company's only witness, Mr. Cabana, does not dispute that it is unusual for a fully loaded vehicle to be left with as little fuel as remained in Mr. Bernier's truck on the morning of January 21, 1988. He readily acknowledged that it would be perfectly natural for Mr. Bernier to be extremely upset in that circumstance, particularly having regard to the extreme cold on that morning. On a review of the evidence it also appears plausible that, assuming Mr. Cabana did not hang up on Mr. Bernier, but their conversation was interrupted by an accidental disconnection, the grievor, who already had reason to be angry, might have misinterpreted what had happened and formed the belief that his dispatcher had hung up on him. It is also not unlikely that in his anger he might not have had heard or paid attention to Mr. Cabana's instructions. While none of these factors would justify the erroneous course of conduct engaged in by Mr. Bernier they do, in some measure, suggest a misunderstanding or a failure of communication that mitigates the seriousness of his actions and would, in the Arbitrator's view, provide some justification for the substitution of a penalty less severe than discharge for this single incident.

The evidence reveals that although he is an employee of only five months with the Company, Mr. Bernier had no prior discipline. At the

time in question he was a driver of some years' experience in the haulage of bulk goods. He has been without employment for some seven months since the date of his discharge. I am satisfied, in all of the circumstances, that the substitution of that period as a suspension, and the reinstatement of Mr. Bernier into his employment without compensation or benefits and without loss of seniority is a more appropriate disciplinary outcome in the circumstances, and I so order. Needless to say, having regard to the grievor's relatively short service with the Company, any further disciplinary infractions of the kind disclosed in the instant grievance may have the most serious of consequences. The Arbitrator remains seized of this dispute in the event of disagreement between the parties respecting the interpretation or implementation of this award.

July 15, 1988

MICHEL G. PICHER  
ARBITRATOR