

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2007

Heard at Montreal, Thursday 15 March 1990

Concerning

CP EXPRESS & TRANSPORT

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Employee Ed Pokonzie, Spareboard Driver, Obico, was assessed 20 demerits for alleged failure to complete pre-trip inspection on May 3, 1989.

JOINT STATEMENT OF ISSUE:

The grievor filed a grievance with respect to the above.

The Union asserts that the 20 demerits were issued without cause (contrary to Article 8) as the envelope from dispatch was not stamped "Dangerous Goods" nor was the grievor so advised by Dispatch and the bill of lading was upside down on the bottom of his envelope and he had no placards. Further, no one else was disciplined for the same offence or for their involvement in this matter. Finally, the grievor himself corrected the situation and brought it to the attention of the Company.

In the alternative, the penalty is too severe and the discipline was issued in an untimely fashion (contrary to Article 8).

The Union requests that the 20 demerits be removed from the grievor's record.

The Company has denied the Union's request.

FOR THE UNION:

(SGD) J. J. BOYCE
GENERAL CHAIRMAN
SYSTEM BOARD OF ADJUSTMENT NO. 517

FOR THE COMPANY:

(SGD) B. F. WEINERT
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

M. D. Failes - Counsel, Toronto
B.F. Weinert - Manager, Labour Relations, Toronto

And on behalf of the Union:

M. Church - Counsel, Toronto
J. Crabb - Secretary/Treasurer, Toronto
E. Pokonzie - Grievor

AWARD OF THE ARBITRATOR

The material establishes that the grievor did neglect to ensure that his trailer was placarded for dangerous goods on May 3, 1989. The evidence further discloses, however, that Mr. Pokonzie himself discovered his error, immediately corrected it by pulling into the nearest terminal at Oshawa to obtain placards, and brought his mistake to the attention of the Company by recording it on his trip sheet. Moreover, it is not disputed that the initial error was made by a terminal clerk, who was responsible for placing the placards on the trailer.

No discipline whatever was assessed against the clerk. Given that fact, and that the grievor did take all reasonable steps to correct his error when discovered, the Arbitrator is not persuaded that the assessment of demerits was appropriate in the circumstances. The discipline for the incident shall therefore be reduced to the registering of a written warning to the grievor in respect of his failure to ensure that his vehicle was properly placarded for dangerous goods on May 3, 1989. The Company is therefore directed to remove, forthwith, the twenty demerits assessed against him from his record.

March 16, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR