

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2008

Heard at Montreal, Thursday, 15 March 1990

Concerning

CP EXPRESS & TRANSPORT

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Employee Ed Pokonzie, Spareboard Driver, Obico, was assessed 10 demerits for alleged violation of Rule 9 - not answering telephone on May 9, 1989.

JOINT STATEMENT OF ISSUE:

The grievor filed a grievance with respect to the above.

The Union asserts that the 10 demerits were issued without cause (contrary to Article 8); that Rule 9 does not apply to a spareboard driver and in the alternative that the penalty is too severe.

The Union requests that the 10 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 beyond dispute that Mr. Pokonzie did not violate Rule 9, a directive which, by its own terms, applies to employees on regular assigned runs who are unable to report for duty. It does not apply to spareboard employees in the circumstances of the grievor. While the Company is entitled to establish rules to govern its employees, they in turn are entitled to expect that notations against their record citing rule violations accurately record the nature of their infraction. In the circumstances the Arbitrator cannot sustain the position of the Company that it was entitled to discipline the grievor for a violation of Rule 9. On that basis the grievance must be allowed, and the Company is directed to remove the ten demerits assessed against the grievor's record forthwith.

March 16, 1990

(Sgd.) MICHEL G. PICHER  
ARBITRATOR