CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2197
Heard at Montreal, Thursday, 10 October 1991
concerning
CANPAR
(CP EXPRESS & TRANSPORT)
and
TRANSPORTATION COMMUNICATIONS UNION
DISPUTE:
The assessing of 30 demerits to employee C. Schenk, CanPar, Toronto, for allegedly falsifying an accident report and being involved in a motor vehicle accident which resulted in his dismissal.
JOINT STATEMENT OF ISSUE:
On April 18, 1991, employee C. Schenk failed to crank the dollies all the way up on the trailer, which resulted in minor damages.
On April 22, 1991, the employee was requested to attend an interview for a motor vehicle accident that occurred April 18, 1991. Although the interviews were treated as one incident, he was assessed 15 demerits for deliberately falsifying an accident report and 15 demerits for a motor vehicle accident.
The Union grieved the assessing of 15 and 15, maintaining the penalty was excessive and requested he be reinstated with full seniority and reimbursed all monies and benefits with interest.
The Company denied the Union's request.
FOR THE UNION:FOR THE COMPANY:
(SGD.) J. J. BOYCE(SGD.) P. D. MacLEOD
SYSTEM GENERAL CHAIRMANDIRECTOR, HUMAN RESOURCES
There appeared on behalf of the Company:
M. Failes-- Counsel, Toronto
P. D. MacLeod-- Director, Linehaul & Safety, Toronto
J. Tucci-- Witness
R. Parisi-- Witness
And on behalf of the Union:
M. Church-- Counsel, Toronto
J. Crabb-- Executive Vice-President, Toronto
M. Gauthier-- Vice-President, Montreal
C. Schenk-- Grievor

AWARD OF THE ARBITRATOR

At the time of the incident giving rise to this grievance the grievor's discipline record stood at fifty-nine demerits. He was, as he knew, on the threshold of discharge. It is not disputed that by his own carelessness he was involved on April 18, 1991 in causing damage to the dollies of a trailer. He then attempted to falsify his accident report to create the impression that the equipment was in a damaged state when he began his tour of duty. He subsequently sought to revise his accident report, but only after he was made aware that a Company investigation was to take place and, it seems, after he learned that the terminal dispatcher had provided the Company with an account of the incident which was at variance with Mr. Schenk's. It is clear that both the carelessness which led to the accident and the dishonesty of Mr. Schenk gave the Company grounds to assess some measure of discipline against him. As an employee with fifty-nine demerits (or even with forty-four, if he assumed that an earlier fifteen demerit sanction would be overturned by a pending grievance) Mr. Schenk knew or reasonably should have known that his employment relationship was in substantial peril should he engage in conduct incompatible with his continued employment. On the whole, the circumstances of his attempted deception, and subsequent confession of wrongdoing leave much to be desired. The Arbitrator can see little if any grounds which would justify the mitigation of the discipline assessed against the grievor.

For the foregoing reasons the grievance must be dismissed.

October 11, 1991

(Sgd.) MICHEL G. PICHER

ARBITRATOR