CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2233
Heard at Montreal, Thursday, 13 February 1992
concerning
CANPAR
and
TRANSPORTATION COMMUNICATIONS UNION
DISPUTE:
The dismissal of employee H.G. McIvor of Calgary, Alberta, for offenses and accumulation of demerits.
JOINT STATEMENT OF ISSUE:
On June 3, 1991, employee George McIvor was terminated as the result of the imposition of 20 demerits for rudeness and 15 demerits for reporting late for work while under the influence of alcohol. This resulted in a total of 90 demerits the Company asserts.
The Union contends that the imposition of the demerits is not warranted and that Mr. McIvor was not discharged for just cause contrary to Article 6.1. The Union also contends that there is a strong element of discrimination and harassment of the grievor by the Company as indicated in its letter of July 4, 1991, to Mr. Paul MacLeod. The Union further contends that the demerits were excessive and that Mr. McIvor ought to be reinstated with full seniority and compensation or such other arrangement as may be appropriate.
The Company contends that the demerits were justified and that the demerits were for just cause and requests that the grievance be dismissed.
FOR THE UNION:
FOR THE COMPANY:
(SGD.) J. CRABB
(SGD.) P. D. MacLEOD
EXECUTIVE VICE-PRESIDENT
DIRECTOR, LINEHAUL & SAFETY
There appeared on behalf of the Company:
C. Peterson
Counsel, Toronto
J. Cyopeck
Executive Vice-President & Chief Operating Officer, Toronto
P. MacLeod
Director, Linehaul & Safety, Toronto
D. Case
Vice-President, Human Resources, Toronto
J. Drown
Regional Manager, Prairies, Calgary
And on behalf of the Union:
H. Caley
Counsel, Toronto
J. Bechtel
Vice-President, Toronto
M. Gauthier
Vice-President, Montreal
H. G. McIvor
Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator discloses, beyond controversy, that the grievor arrived for work on May 31, 1991, that he smelled of alcohol and that when he was asked whether he would be able to pass a breathalizer test he expressed some doubt as to whether he could. It is also not disputed that this was the second occasion that the grievor had appeared for work affected by alcohol. The first transpired on August 10, 1990, an offence in respect of which he was assessed ten demerits.

It is also not disputed that on May 22, 1991 Mr. McIvor used loud and offensive language in dealing with a member of the public whose vehicle was blocked by his delivery truck. He did so within the hearing of a delivery customer, with a sufficient degree of loudness to cause the customer to write a letter of complaint to the Company stating that both it and its clients were disturbed by his actions. The records reveals that the grievor had been disciplined for a number of prior incidents involving rudeness, the most recent being April 2, 1991, some seven weeks prior to the incident at hand. At the time of the two incidents which are the subject of this grievance Mr. McIvor had fifty-five demerits against his record.

In his defence counsel for the Union stresses that Mr. McIvor has an accident free driving record of some six years. He submits that the evidence does not disclose that he was impaired at the time he came to work on May 31, 1991, but rather that he had been drinking the night before and still smelled somewhat of beer. He also argues that the incident involving the motorist was exaggerated in the letter of complaint filed by the customer. Additionally, Counsel stresses that the grievor has been the subject of bad treatment by supervisors in the past, which he characterizes as harassment, and that he was once denied access to professional assistance for his stress and temper problems through the Company's Employee Assistance Program. Counsel further emphasizes the candour of the grievor in admitting his error in both incidents in question.

Apart from Mr. McIvor's candour, and his accident free record, there are few mitigating circumstances which weigh in his favour in the instant case. As an employee with fifty-five demerits he knew, or reasonably should have known, that any culminating incident of substance would be sufficient to place him in a dismissable position. Having previously been discharged for a disciplinary infraction, and subsequently reinstated, subject to a lengthy suspension, by an order of this Office (CROA 1552), Mr. McIvor is no stranger to the Brown System of discipline and the ultimate impact of a dismissal. Notwithstanding that, his infractions in both instances are recidivist in nature. In the circumstances the Arbitrator must have grave doubts about the rehabilitative value of a reduced penalty. On the whole, the evidence discloses an employee with a tendency to be a repeat offender who has not brought his conduct into line with the Company's rules and generally accepted norms of behaviour, notwithstanding the application of progressive discipline and repeated efforts by the employer aimed at his rehabilitation.

In all of the circumstances the Arbitrator can see no reason to exercise his discretion to substitute a lesser penalty. That conclusion is all the more compelling where, as in the instant case, even a reduction to five demerits would still leave the grievor in a dismissable position. For the foregoing reasons the grievance must be dismissed.

February 14, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR