

- 3 -

Canadian Railway Office of Arbitration  
case no. 2465  
Heard in Montreal, Thursday, 10 March 1994  
concerning  
CanPar  
and  
Transportation Communications Union  
Dispute:

The assessment of fifty-five (55) demerits and a one week suspension to Ley Spence, London, Ontario.

Joint Statement of Issue:

Employee Ley Spence was advised that she was being assessed fifty-five (55) demerits and given a one week suspension for allegedly falsifying Company documents.

The Union asserts that no witness or no witness statement was presented at the interview, only the statement that a witness had seen her there.

The Union also asserts that she was also punished twice for the same alleged infractions.

The Union through the grievance procedures requested that the fifty-five (55) demerits be removed and she be paid for the one week suspension.

The Company declined the Union's request.

for the Union: for the Company:

(sgd.) D. J. Dunster (sgd.) P. D. MacLeod  
Executive Vice-President Director, Terminal  
There appeared on behalf of the Company:

M. D. Failes- Counsel, Toronto  
B. F. Weinert - Director, Labour Relations, Toronto  
E. Sitzes - Driver Representative, CanPar, London  
And on behalf of the Union :  
H. Caley - Counsel, Toronto  
A. Dubois - Vice-President, Montreal  
D. Deveau - Executive Vice-President, Montreal  
D. J. Bujold- National Secretary/Treasurer, Ottawa  
K. D. Gilderman - General Chairman, Duluth, Minnesota  
L. Spence - Grievor

award of the Arbitrator

The case of the Company in respect of the alleged infraction committed by Ms. Spence depends entirely upon the reliability of the evidence of Mr. Elmer Sitzes. Mr. Sitzes maintains that he saw the grievor at a coffee shop near the conclusion of her delivery run at 2:45 p.m. on April 6, 1993. It is not disputed that had Ms. Spence been in that location at that time, she could not have properly claimed an additional half hour of overtime for the day in question, as she did.

The case resolves itself, as Counsel for the Company concedes, on the issue of the credibility of the accounts given by Mr. Sitzes and Ms. Spence, respectively. Ms. Spence is a long term employee, with sixteen years of service and an exemplary record insofar as discipline is concerned. According to her evidence she had a heavier than average delivery day on April 6, 1993. Reconstructing her day from her time sheets, she estimates that she could not have been at the restaurant in question much before the period of 3:30 to 4:00 p.m., which is the normal time that

she stops there, almost on a daily basis. In support of her estimate of her movements on the day in question the grievor filed in evidence written statements from customers with respect to the time at which she made deliveries to them. For example, customer Nancy Thompson attests to having signed for a parcel delivered in Ailsa Craig at around 3:00 p.m. on April 6, 1993. An employee of Sears Canada states that the grievor came into the Sears outlet in Ailsa Craig between 3:00 and 3:30 p.m. on the 6th. The material before the Arbitrator also discloses that the grievor had some difficulty responding to the allegations made by the Company, to the extent that she was not made aware that any irregularity was being alleged with respect to her April 6th time sheets until approximately April 13th or 14th, when she first received notice of a disciplinary interview. On the whole the Arbitrator views the grievor as a careful and candid witness whose testimony was faithfully given, to the best of her recollection.

The reliability of the statement of Mr. Sitzes is more questionable. Under cross-examination he admitted that the date appearing on his written statement to the Company, which was the basis for the action taken against the grievor, is incorrect. He explained that he put the date of April 8th on the statement, even though he wrote it on April 7th, because he was so instructed by his supervisor. It also appears that there are discrepancies in his estimate of certain of the times in which he either saw the grievor at the restaurant or allegedly spoke with her upon her return to work. Ms. Spence denies having had any conversation with Mr. Sitzes at the end of her work day on April 6, 1993.

The Arbitrator is prepared to accept that Mr. Sitzes saw the grievor's vehicle at the Early Bird Restaurant on the afternoon of April 6, 1993. On the whole, however, I am not persuaded, on the balance of probabilities, that the accuracy of his estimates at to time can be relied upon, including the time which he noted as the time of his return to the terminal. As that time, as well as others attested to by Mr. Sitzes, is critical to the Company's case, I cannot find that it has discharged the burden of establishing that the grievor knowingly attempted to defraud the Company by falsifying her time sheets for the date of April 6, 1993. On the contrary, having regard to her own evidence, I am satisfied that she did not, and that the entries which she made on her time sheet for that date are an accurate reflection of the work which she performed.

For the foregoing reasons the grievance must be allowed. The Arbitrator directs that the fifty-five demerits assessed against the grievor's record be removed forthwith, that the suspension likewise be expunged from her record and that she be compensated for all wages and benefits lost.

11 March 1994 (sgd.) MICHEL G. PICHER  
ARBITRATOR