

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2739

Heard in Calgary, Wednesday, 15 May 1996

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Burnaby employees D. Boyd and D. Eby assessed thirty (30) demerits each, for allegedly improper work and time report on 06/07/95.

UNION'S STATEMENT OF ISSUE:

Supervisor N. Javallas alleges he witnessed Mr. Eby arrive at Too-Bros Café at 9:20 am. He also alleged that Mr. Boyd and Mr. Cooper followed at 9:24 am. All departed at 9:51 am. At the investigative interview the Company alleged that Mr. Eby and Mr. Boyd did not record their actual arrival or departure time in the scanner. For that alleged infraction they were each assessed thirty (30) demerits.

The Union filed a grievance on October 10, 1995 at Step 2 to which the Company did not respond until November 25, 1995. On November 28th, 1995 we advised the Company they had not complied with the mandatory time limits and requested that the demerits be deleted which was denied by the Company.

The grievors agree that time recorded into their scanners is consistent with the time it would take to go from their terminal to Too-Bros Café during rush hour traffic. D. Dobson, who conducted the investigative interviews, stated that these two employees admitted taking more than fifteen (15) minute coffee break. The employees and the Union representative present at the interviews denied Mr. Eby and Mr. Boyd made such a statement.

The Union submits that the Company did not provide proof to contradict the drivers' statements and the time recorded in their scanners is the actual arrival and departure times at the Too-Bros Café.

The Union requested the discipline be stricken from their record.

The Company denied our request.

FOR THE UNION:

(SGD.) D. E. GRAHAM
DIVISION VICE-PRESIDENT

There appeared on behalf of the Company:

M. D. Failes	– Counsel, Toronto
P. D. MacLeod	– Director, Terminals, Toronto
R. Downs	– Regional Sales Manager, Western Canada

And on behalf of the Union:

R. Coleman	– Counsel,
D. E. Graham	– Assistant Division Vice-President, Regina

A. Kane

– Local Representative, Vancouver

AWARD OF THE ARBITRATOR

The record before the Arbitrator confirms that the grievors were observed by Terminal Supervisor Rick Javallas taking coffee breaks at the Too-Bros Café in the period between 9:20 and 9:51 a.m. on June 6, 1995. The incident in question is the same as reviewed by this Office in relation to another employee who was also involved in the coffee break, Mr. Cooper, as related in **CROA 2674**.

Upon a careful review of the evidence the Arbitrator is satisfied that the grievors did falsely record the period of their coffee break by making illegitimate entries on their respective work record scanners. I am satisfied, on the whole, that they made false entries into the Company's record system to conceal the fact that they took excessive time in their coffee breaks on the day in question.

During the course of the presentation of its brief, the Union asserted that the Company violated article 6.2 of the collective agreement by failing to have Mr. Javallas present to substantiate the content of his report at the disciplinary investigation. However, there is no reference to an alleged violation of article 6.2 in the *ex parte* statement of issue filed by the Union in this matter. In the result, that issue is not properly before the Arbitrator, having regard to the memorandum of agreement which governs the procedures of this Office.

Nor can the Arbitrator sustain the suggestion of the Union's representative that there was a violation of time limits which would nullify the discipline assessed against the grievors. As is apparent from the provisions of article 9 of the collective agreement, the failure of the Company to respond to a grievance within the prescribed time limit does not nullify the discipline. Rather, it allows the Union to progress the grievance to the next step. In the circumstances, therefore, there is no merit to the objection as to the period taken by the Company to reply to the grievance at step 2.

As prior awards of this Office have indicated, the grievors work in a position of trust, being charged with faithfully recording their own working time, coffee breaks and meal breaks over the course of a day. They do so in an unsupervised setting, and any attempt to mislead the Company by falsifying the records is a matter of serious concern deserving of a substantial measure of discipline. In the instant case the Arbitrator is satisfied that the thirty demerits assessed against Mr. Boyd and Mr. Eby was within the appropriate range of disciplinary response, and that there are no mitigating circumstances which would support a reduction of the discipline assessed.

For these reasons the grievances must be dismissed.

May 17, 1996

(signed) MICHEL G. PICHER
ARBITRATOR