

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2782

Heard in Calgary, Tuesday, 12 November 1996

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Burnaby employee R. Phillips assessed 15 demerits for alleged "work and time reporting 04/08/96".

JOINT STATEMENT OF ISSUE:

On April 8, 1996, Mr. Phillips was asked by Supervisor N. Javellas to take the freight that was piled behind and off to the side of his truck. Mr. Phillips took sufficient freight to bring his stop count up to 58 stops. He also advised Mr. Javellas that he wasn't feeling 100% and needed to take his lunch break.

Mr. Phillips stated he completed his deliveries and took his lunch break from 13:06 to 13:36 which was recorded in the scanner. He then drove to a book store to make a second attempt to deliver that shipment. From 13:39k to 13:55k he took a break including a bathroom break which was recorded in the scanner.

The Union contends that the Company didn't comply with the intent or expectation of article 6.5. We do not believe that the statement "work and time reporting on 04/08/96" can be considered as full particulars of the reasons for the action taken. In addition Mr. Ted Donnelly stated that discipline was issued because of Mr. R. Phillips' combined breaks which he denied.

The Union believes that Mr. R. Phillips' explanation for the second break was logical and requests the demerits be removed from his discipline record.

The Company denied our request.

FOR THE UNION:

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

FOR THE COMPANY:

(SGD.) P. D. MacLEOD
VICE-PRESIDENT, OPERATIONS

There appeared on behalf of the Company:

P. D. MacLeod – Vice-President, Operations, Toronto

And on behalf of the Union:

D. E. Graham – Division Vice-President, Western Canada, Regina

AWARD OF THE ARBITRATOR

Upon a review of the material filed the Arbitrator is satisfied that the grievor did not provide a satisfactory explanation for his work and time reporting for April 8, 1996. Even allowing for the fact that there was a three minute period between his lunch break and afternoon coffee break, it is difficult to avoid the conclusion that he knowingly took his breaks back to back, contrary to what he knew was the Company's rule against doing so. The Arbitrator appreciates that the grievor may have felt some ill effects from an ongoing medical condition on the day in question. However, as the Company's representative suggests, he could have dealt with that problem by extending his lunch hour, which is an unpaid period.

There are, nevertheless, certain mitigating factors to be considered in this case. Foremost among those is the fact, which is not disputed, that the grievor has no prior significant discipline on his record since the time of his first hire in August of 1989. It also does not appear disputed that he did indicate to his supervisor on the morning in question that he was not feeling well, and that his ailment, a chronic gastric disorder, was a factor on the day in question. In the Arbitrator's view, in all of the circumstances, the assessment of ten demerits would have been sufficient to bring home to the grievor the need to respect the Company's directives concerning the booking in tandem of lunch and coffee breaks.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor's record be amended by the substitution of ten demerits for his violation of work and time reporting rules on April 8, 1996. The Arbitrator is further satisfied that no violation of article 6.5 is disclosed in the case at hand, as the grievor was fully aware of the nature of the Company's concerns both at the time of the investigation and when the discipline was assessed.

November 16, 1996

(signed) MICHEL G. PICHER
ARBITRATOR