

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2848

Heard in Calgary, Tuesday, 13 May 1997

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Driver Representative D. Lewandoski was assessed 20 demerits for failure to follow a directive of a supervisor on 10/2/96.

EX PARTE STATEMENT OF ISSUE:

On October 2nd, 1996, Darren Lewandoski was asked by Supervisor B. Hunsinger to work overtime to make a pickup. Mr. Lewandoski said that he did not want overtime. Mr. Hunsinger told him that he was the only driver available he had to work the overtime.

The Union claims that Driver Representatives J. Case and R. Ware who are senior to D. Lewandoski were both available and in fact J. Case did work the overtime once it was offered.

The Union maintains that the Company did not comply with article 8.6 of the collective agreement because they failed to offer the overtime to the senior driver who was readily available.

The Union asked that the 20 demerits charged to Mr. Lewandoski be removed from his discipline record.

The Company denied out request.

FOR THE UNION:

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

FOR THE COMPANY:

(SGD.) P. D. MACLEOD
VICE-PRESIDENT, TERMINALS

There appeared on behalf of the Company:

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

And on behalf of the Union:

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

AWARD OF THE ARBITRATOR

Upon a review of the evidence the Arbitrator is satisfied that the grievor was deserving of some discipline. To all appearances, there were no other drivers available on the premises when Mr. Lewandoski was requested to make an urgent run to the premises of a customer whose location was nearby, and would involve only a matter of minutes. When he refused to take the assignment he did not indicate to his supervisor that there was anyone else available, nor is there evidence to satisfy the Arbitrator that the supervisor had, or reasonably should have had, such knowledge.

The Arbitrator must agree, however, with the Union's representative with respect to the quantum of discipline in this case. The grievor is an employee of reasonably long service whose disciplinary record reflects the assessment of demerits on only one prior occasion in a period of some ten years. Moreover, as the evidence discloses, the Company was in fact able to secure another more senior employee to perform the work in question. On the whole I am of the view that the assessment of demerits in this case is excessive, and that a written warning would have been sufficient to bring to the grievor's attention the importance of responding to urgent overtime situations.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor's disciplinary record be amended to reflect the assessment of a warning for the incident of October 2, 1996, with the twenty demerits to be removed from his record.

Dated at Montreal, May 30, 1997

(signed) MICHEL G. PICHER
ARBITRATOR