

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2922

Heard in Montreal, Thursday, 11 December 1997

concerning

CANPAR

and

Transportation Communications Union

DISPUTE:

CanPar employee Eglon Gordon (Concord Ontario Terminal) for being assessed 16 demerits and a disciplinary suspension from January 29 to February 03, 1997, inclusive, for the alleged infractions of failure to call one hour prior to starting time and his lateness for work on January 21, 1997, contrary to instructions, failing to follow a directive and threatening the lead hand on January 22, 1997.

JOINT STATEMENT OF ISSUE:

On the morning of January 21, 1997, Mr. Eglon Gordon along with another employee Mr. George Paul were late in arriving for the start of their shift at CanPar due to the fact that Mr. Paul whom Mr. Gordon regularly drives in to work with had over slept.

Mr. Gordon who routinely rode with Mr. Paul to work tried calling Mr. Paul several times to see why he was late, but could not reach him as Mr. Paul had turned the phone down the previous night. Mr. Gordon who lives a fair distance away from CanPar cannot get to work quickly by taking public transit. First, he must take a combination of six (6) buses to get to work. Second, Mr. Gordon's start time at CanPar is five (5) o'clock in the morning. The bus service at that or earlier in the morning is on a very limited schedule. Mr. Gordon did call CanPar at approximately five-thirty (5:30 a.m.) to inform them of the predicament plus to inform the Company he would be in to work.

The second and third incidents are coupled together. Failure to follow instruction and threatening the lead hand.

These incidents revolve around a cup of coffee on the person of Mr. Gordon in the CanPar Concord terminal's warehouse on the morning of January 22, 1997.

It is the grievor's position that he is unclear on the Company's policy on allowing coffee or any other food substance in the warehouse. Certainly other warehouse and driver personnel have taken food into the warehouse and have consumed said food stuffs in the warehouse without being disciplined for it.

The grievor could not understand the lead hand's reasoning for asking him to remove the coffee from the warehouse and none was given.

It is the Union's position the threatening of the lead hand is unfounded.

The Union requested that Mr. Gordon be treated in the fashion of that described in the November 13, 1995 letter written to the Union's Executive Vice-President, Mr. Dennis Dunster from the Vice-President, Human Resources, CanPar Transport, Ms. Dawn Case. That being that Mr. Gordon be treated under the principles set out in the Canadian Human Rights Act, to which Ms. Case assured Mr. Dunster, the Company was committed.

The Union requested the Company reimburse Mr. Gordon for lost compensation and benefit due to the disciplinary suspension and further requested the removal of the 16 demerits from his file associated with this case.

The Company has denied the Union's request.

FOR THE UNION: FOR THE COMPANY:

(SGD.) D. NEALE (SGD.) P. D. MACLEOD

DIVISION VICE-PRESIDENT

VICE-PRESIDENT, OPERATIONS

There appeared on behalf of the Company:

M. D. Failes – Counsel, Toronto

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

R. Weight – Regional Manager, Toronto

A. Darbo – Lead Hand, Concord Terminal, Toronto

D. Eliopolous – Terminal Supervisor, Concord Terminal, Toronto

And on behalf of the Union:

P. Sadik – Counsel, Toronto

D. Neale – Assistant Vice-President, Trucking Division, Toronto

D. Byfield – Local Chairman, Toronto

E. Gordon – Grievor

The hearing was adjourned to Tuesday, 10 February 1998.

On Tuesday, 10 February 1998, there appeared on behalf of the Company:

M. D. Failes – Counsel, Toronto

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

R. Weight – Regional Manager, Toronto

A. Darbo – Lead Hand, Concord Terminal, Toronto

D. Eliopolous – Terminal Supervisor, Concord Terminal, Toronto

And on behalf of the Union:

P. Sadik – Counsel, Toronto

D. Neale – Assistant Vice-President, Trucking Division, Toronto

D. Byfield – Local Chairman, Toronto

E. Gordon – Grievor

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AWARD OF THE ARBITRATOR

The grievor, who is forty-four years old, worked for the Company for some eight years prior to the events leading to the discipline which is the subject of this grievance. The material and evidence before the Arbitrator establish, on the balance of probabilities, that the grievor failed to call the Company to advise that he would be late on the morning of January 21, 1997, within the one hour time delay required in accordance with Company policy. The grievor was scheduled to commence work at 5:00 a.m. that day. Because of a problem with his ride, he in fact did not arrive at work until approximately 6:15 a.m. It is common ground that the grievor did call the plant at 5:30 a.m., to report that he would be late.

The record reflects that the grievor was issued a warning letter for reporting late for work in 1991, and suffered a five day suspension for repeated incidents of lateness and failure to call, in 1996. In the circumstances I am satisfied that he was deserving of discipline for the incident of January 21, 1997.

The second aspect of this grievance and discipline concerns an incident which occurred in the Concord Terminal on the morning of January 22, 1997. The Arbitrator is satisfied that the account of these events offered by the Company's

witnesses, and in particular Mr. Abby Darbo, a lead hand, and Terminal Supervisor Dennis Eliopolous is to be preferred to the evidence of the grievor in matters of conflict. I am satisfied that the evidence establishes that Mr. Darbo observed the grievor with a cup of coffee at or near the conveyor belt, an action which would be in violation of the practice and policy within the terminal. The evidence indicates that the practice is for employees to keep coffee away from the loading belt, generally within the cab of a truck which they may be loading, so as to avoid any damage to parcels. When Mr. Darbo attempted to correct the grievor, by telling him that he should not have coffee at the conveyor belt, the grievor reacted angrily, accusing Mr. Darbo of singling him out, and inviting him to fight outside if that is what he wanted.

Mr. Gordon's reaction caused the lead hand to summon Terminal Supervisor Eliopolous to the belt area. When Mr. Eliopolous found Mr. Gordon still refusing to remove his coffee as directed by Mr. Darbo he ordered him to do so himself. Mr. Eliopolous relates that Mr. Gordon nevertheless refused his direction and continued to discuss going outside to fight with Mr. Darbo. At that point the supervisor directed him to leave for the day.

However the evidence discloses that Mr. Gordon did not leave the premises. It appears that he went briefly to the cafeteria, and then returned to write down names of employees who had witnessed the incident. When Mr. Eliopolous questioned why the grievor was still on the premises, and told him again to leave, Mr. Gordon still refused. This caused the police to be summoned, whereupon Mr. Gordon was escorted from the premises.

Upon a review of the evidence the Arbitrator is satisfied that the account of events rendered by Mr. Darbo and Mr. Eliopolous is accurate. It appears well established that Mr. Gordon failed to observe the general rule with respect to coffee not being kept in the area of the belt, was disrespectful towards Lead Hand Abby Darbo when the latter tried to correct his actions, and was openly insubordinate of Mr. Eliopolous by refusing to leave the premises when ordered to do so. I am further satisfied that the grievor exceeded the limits of appropriate conduct by threatening to fight with Mr. Darbo and by raising his voice against his supervisor, Mr. Eliopolous.

The evidence discloses that the grievor had previously been disciplined for insubordination, receiving twenty demerits for that infraction in 1992 and twenty-nine demerits for a similar incident in 1996, as well as a further insubordination incident in the same year. Mr. Gordon's record stood at thirty-nine demerits at the time of the events before me. Regard being had to the whole of the evidence, I am satisfied that the assessment of sixteen demerits was appropriate in the circumstances, and should not be disturbed. In coming to that conclusion I place some weight on the fact that Mr. Gordon appears to have no understanding of his obligation to call in the event that he is to be late. By his own admission, he refused to call on the date in question because it might prompt the Company to replace him,

so that he might be sent home upon arriving late. Obviously the very purpose of the call is to allow the Company to make alternative scheduling arrangements, to meet its production demands. The grievor's inability or refusal to appreciate the importance of the policy and his deliberate efforts to frustrate it, do not suggest that mitigation of the penalty is appropriate in the case at hand.

For the foregoing reasons the grievance is dismissed as respects both incidents.

February 16, 1998 **(signed) MICHEL G. PICHER**

ARBITRATOR