

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2923

Heard in Montreal, Thursday, 11 December 1997

concerning

CANPAR

and

Transportation Communications Union

DISPUTE:

CanPar employee Eglon Gordon (Concord, Ontario Terminal) being assessed 10 demerit marks for failing to report for scheduled start time and lateness on April 22, 1997.

JOINT STATEMENT OF ISSUE:

Mr. Eglon Gordon's scheduled start time at CanPar Transport is five hundred hours (5:00 a.m.). On the morning of April 22, 1997, Mr. Gordon was not feeling well. At four hundred hours (4:00 a.m.) Mr. Gordon contends he tried to call CanPar to inform the Company he was going to be late for work. There was however, no answer at CanPar Transport terminal at four hundred hours (4:00 a.m.).

The Company contends that Mr. Gordon broke CanPar policy by not calling in one hour prior to the start of his shift.

The Union contends that the grievor did call in one hour prior, but given the time of day, no one was even at CanPar, so how or who could he call?

The Union maintains that the grievor followed the rules of the policy the best he could given the circumstances and the time of day.

The Union requested the Company to remove the demerits as no violation of rules or policy were broken by Mr. Gordon, but simply he could not carry out policy as no one was at CanPar to take his call.

The Company 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

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied, on the evidence tendered, that Mr. Gordon did fail to appear for work as scheduled, and that he did not call the employer one hour prior to the commencement of his shift, as required by Company policy. I prefer the evidence of the Company, which is that both Lead Hand Abby Darbo, and another employee, were present in the plant at the time the grievor's alleged telephone call would have been made, and that they heard no such call.

In light of the grievor's prior record in matters of attendance and lateness, the assessment of ten demerits is justified, and the grievance is therefore dismissed.

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

ARBITRATOR