

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2924

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 24, 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 24, 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

It is not disputed that the grievor was late for work on April 24, 1997. The grievor claims that he telephoned the plant at 4:00 a.m., and received no answer. It is not disputed that he did telephone at 5:10 a.m. to advise Lead Hand Abby Darbo that he would be late.

The Arbitrator does not accept the evidence of the grievor to the effect that he telephoned the plant at 4:00 a.m. Having observed the grievor testify on a number of points in this and other grievances heard concurrently, his credibility is in considerable question.

Given the grievor's prior record with respect to absenteeism and lateness, the assessment of ten demerits was appropriate in the circumstances. The grievance is therefore dismissed.

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

ARBITRATOR