

# **CANADIAN RAILWAY OFFICE OF ARBITRATION**

## **CASE NO. 2926**

Heard in Montreal, Thursday, 11 December 1997

concerning

**CANPAR**

and

**Transportation Communications Union**

### **DISPUTE:**

CanPar employee Eglon Gordon (Concord, Ontario Terminal), for having four (4) demerits placed against his record regarding a discrepancy in the length of time that Mr. Gordon was away from his work station due to a washroom break and conduct following.

### **JOINT STATEMENT OF ISSUE:**

During the evening of March 26, 1997, while Mr. Gordon was working at the CanPar Concord Terminal he had to leave his work station for a washroom break.

On March 26, 1997, the Company contended that Mr. Gordon was in the washroom for the extended period of time of twenty-five (25) minutes. The Union contended the time was closer to fifteen (15) minutes.

The Union further grieved the fact that the interview held on April 22, 1997 to determine cause and responsibility of the grievor in this matter lasted six and one-quarter hours.

Further still, the Union grieved the fact that the Company official had over-stepped his official capacity during the washroom incident. The Union contended that Mr. Gordon's personal freedom was violated and that harassment contrary to Company policy and the Canadian Human Rights Act had been violated.

The Union requested the demerits given to this case be removed and that the harassment of this employee be stopped.

The Company denied harassment had taken place and refused to remove the demerits.

**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**

On the evidence filed, the Arbitrator is satisfied that the grievor did take an excessive time in the bathroom on March 26, 1997, amounting to some twenty-five minutes. It appears that on two occasions Supervisor Aurel Chiasson went to the washroom to tell the grievor that he was needed back at work. Mr. Gordon relates that on the second occasion Mr. Chiasson pushed open the door of his toilet stall. The Arbitrator does not believe that evidence, and notes that in a written report of the incident made at the time Mr. Gordon made no such allegation.

It does not appear disputed that upon returning to the work area Mr. Gordon erupted in the face of Mr. Chiasson, using a loud and angry tone, accusing him of harassment and discrimination.

Even if one accepts, for the sake of argument, that the grievor was entitled to take in excess of fifteen minutes, perhaps as long as twenty-five minutes in the washroom, there is no defence for the excessive reaction which he visited upon Mr. Chiasson in the circumstances disclosed. If the grievor had an objection to the prodding of his supervisor, that was a matter which could have been dealt with through the grievance procedure. In the circumstances insubordination was not justified.

I am satisfied that the assessment of four demerits, a fractional number arrived at by the Company in an attempt to save the grievor's employment, was justified in the circumstances.

The grievance is therefore dismissed.

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

**ARBITRATOR**