

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2927

Heard in Montreal, Thursday, 11 December 1997

concerning

CANPAR

and

Transportation Communications Union

DISPUTE:

CanPar employee Eglon Gordon (Concord, Ontario Terminal) being assessed ten (10) demerits for failing to report for scheduled interview on June 30, 1997.

JOINT STATEMENT OF ISSUE:

On or about June 26, 1997 an interview notice was given to Mr. Gordon for an interview to be held on June 30, 1997.

The interview was later rescheduled to July 21, 1997.

The Union contends that Mr. Gordon was sick on that date of June 30, 1997 and thus could not attend the interview. In accordance to the collective agreement, article 6, Mr. Gordon had a reasonable excuse not to attend the interview. Further, the Union contends the Company acknowledged that fact as they did reschedule the interview.

The Union contended that Mr. Gordon co-operated with the Company at all times and because of medical problems did not attend said interview(s).

The Union requested the Company remove the ten (10) demerits assessed to Mr. Gordon's file based on the above.

The Company denied the Union's request.

The Union's position remains the same.

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 evidence establishes, to the Arbitrator's satisfaction, that the grievor did receive proper notice of a disciplinary interview to be held on June 30, 1997. While it appears

that the grievor was hospitalised on June 28 and 29, 1997, he was in fact at home on the day of the interview. While the Arbitrator accepts that Mr. Gordon may have been ill on that date, there is no evidence that he made any attempt to inform the Company as to his condition, or that he would be unable to attend the interview, which both management and Union representatives were there to deal with.

Unfortunately, when the matter was finally investigated on or about July 31, 1997 Mr. Gordon refused to provide any information to the Company, or to answer any questions in relation to the incident, apparently because he was advised that he would not be paid for the time of the disciplinary interview. In the result, the Company was left with no explanation as to the grievor's failure to appear for the interview of June 30, 1997, and certainly no explanation as to why he was unable to call to let the Company and Union officials know that he would not be present. Indeed, there was no attempt made by the grievor, during the course of his evidence before the Arbitrator, to explain why he might not have been able to call on or before the 30th to advise of his circumstances.

The record amassed by the grievor with respect to lateness, absences and failures to call is extensive, and appears not to have improved, notwithstanding prior discipline. In the circumstances I am satisfied that the ten demerits assessed against the grievor were justified for the incident in question, and that that result should not be disturbed. As Mr. Gordon's disciplinary record previously would have stood at fifty-five demerits, that would have resulted in his discharge, again, a consequence which the Arbitrator cannot responsibly disturb.

The grievance is therefore dismissed.

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

ARBITRATOR