CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2971
Heard in Montreal, Tuesday, 8 September 1998
concerning
CANPAR
and
TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

On February 27, 1997, at 195 Spadina Avenue, Toronto, Ontario, Mr. Abe Solomon, a CanPar Transport delivery driver had an On-Road-Inspection at 2:40 p.m. done by Mr. Barry Hansinger and Mr. Tony Lau, both supervisors for CanPar Transport. Mr. Solomon was later charged with having his vehicle unsecured and leaving parcels unattended as a result of this On-Road-Inspection done on February 27, 1997.

JOINT STATEMENT OF ISSUE:

On February 27, 1997, at approximately 2:40 in the afternoon, Mr. Solomon was making a delivery at 195 Spadina Avenue, Toronto. Mr. Solomon had two big, awkward boxes for the consignee and took both parcels out of his vehicle for delivery at the same time.

The awkwardness of the parcels only allowed Mr. Solomon to take the parcels in one at a time. When questioned at the investigative interview, Mr. Solomon stated that his vehicle was secured and that all doors were locked or padlocked.

While taking the first parcel into the consignee business the consignee witnessed another CanPar employee (person in a CanPar uniform) take the second parcel beside the vehicle to the back of the vehicle. It was learned the person who took the parcel was Supervisor Lau.

The Union contends that Mr. Solomon was conducting Company business in a dependable fashion and did not put or leave the consignee's parcel or the Company's vehicle in an unsecured situation. The Union maintains its position and requested the Company remove the demerits from Mr. Solomon's record.

The Company has declined the Union's request.

FOR THE UNION:

FOR THE COMPANY:

(SGD.) D. NEALE

DIVISION VICE-PRESIDENT

(SGD.) P. Q. MACLEOD

VICE-PRESIDENT, OPERATIONS

There appeared on behalf of the Company: P. D. MacLeod R. Dupuis
- Vice-President, Operations, Toronto - Regional Director, Montreal

And on behalf of the Union: D. Durister D. Neale
- Executive Vice-President, Ottawa
- Division Vice-President, Hamilton

AWARD OF THE ARBITRATOR

Upon a review of the material filed the Arbitrator is satisfied, on the balance of probabilities, that the grievor's truck was improperly secured on February 27, 1997. The grievor does not dispute that a supervisor was able to enter the rear doors of his truck, and that thereafter he found

his padlock to be defective and replaced it. I am not prepared to conclude that the padlock was in fact disabled by the supervisor, as there is no evidence whatsoever to support such conjecture.

The grievor's disregard for the security of freight is also disclosed by the fact that he admittedly left a parcel on the sidewalk in front of a store, while carrying another large box into the premises. His suggestion that the parcel left on the sidewalk remained secure because he asked a female attendant at the customer's store to keep an eye on it speaks disturbingly to Mr. Solomon's failure to understand the concept of security. Leaving a customer's parcel unattended on the sidewalk of a busy Toronto street is, by any reckoning, a serious breach of professional standards and common sense.

This Office has been consistent in its sustaining of discipline in the range of twenty demerits for an employee's deliberate failure to properly secure the contents of his or her vehicle (see, e.g., **CROA 1509, 1781, 2709 and 2898).** The Arbitrator can see no reason to depart from the generally established standard of discipline disclosed in the prior awards, given the circumstances of the instant case. That is particularly so as the grievor has, on at least one prior occasion, been disciplined for failing to secure his vehicle.

On the foregoing basis, therefore, the grievance must be dismissed.

September 11, 1998 **(signed) MICHEL G. PICHER**
ARBITRATOR