

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2937

Heard in Montreal, Wednesday, 11 March 1998
concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Appeal of discipline assessed Mr. Alan Andr , Graig Berendy, Daniel Berthiaume, Marcel Barnabe, Yves Cote, Claude Depatie, Charles Doyon, Tony Dery, Gilles Gauvin, Michel Gauvin, Michel Gorry, Gilles Gazaille, Andr  Goffey, Antony Goursi, Denis Leger, Pierre Laporte, R. Labreque, Robert Martin, l. Matrondola, Claude Mercier, James Martin, Jean Majeau, Jean Madore, Daniel Pensivy, Bernard Pero, Rene Pichette, Jules Rochemont, Gerry Rosette, Daniel Sacerwicz and Gery Scrivo, of Montreal who were assessed twenty (20) demerits regarding the alleged work stoppage on October 30, 1997.

JOINT STATEMENT OF ISSUE:

The Union contends that on October 30, 1997 at 08:30 the Terminal Manager, Dean Cardi, came into the cafeteria and the employees started asking questions why a ticket for a no trucking zone was not being paid by the Company.

The Terminal Manager replied he personally felt that the Company should pay the ticket but his boss said not to pay it. He also told the employees to stay in the cafeteria and the Regional Manager, Mr. Robert Dupuis would be out in a few minutes to give his explanation. No orders were given by either Cardi or Dupuis to go to work, but rather they would simply be given an explanation of the situation. The employees did what they were told.

The Union contends that the discipline was unjustified and unwarranted, therefore requested that the discipline assessed be removed from their records.

The Company declined the Union's request.

FOR THE UNION:

(SGD.) R. NADEAU

DIVISION VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) P. D. MACLEOD

DIRECTOR, LINEHAUL & TRANSPORT

There appeared on behalf of the Company:

M. D. Failes	- Counsel, Toronto
P. D. MacLeod	- Vice-President, Operations, Toronto
R. Dupuis	- Regional Manager - Quebec, Montreal
D. Cardi	- P&D Manager, Montreal
G. Mosquera	- Supervisor, Montreal

And on behalf of the Union:

D. Dunster	- Executive Vice-President, Ottawa
R. Nadeau	- Division Vice-President, Quebec
R. Pichette	- Local Protective Chairman
S. Wheatley	- Witness
C. Mercier	- Witness

AWARD OF THE ARBITRATOR

This grievance involves some thirty-one employees of the Company at its Montreal terminal alleged to have participated in an unlawful work stoppage. The facts are not in substantial dispute. It appears that the Company has a practice of paying traffic tickets for drivers who are required to operate their vehicles on "no truck" streets. In October of 1997 Driver G. Coulombe received a \$400.00 ticket for having placed his vehicle on St. Elizabeth Street, contrary to local by-laws. His request for the Company to pay the ticket was declined, apparently on the basis that he did not need to utilize St. Elizabeth Street to perform his deliveries. It appears that on October 29, 1997 Mr. Coulombe posted the declined ticket on the bulletin board, along with his declined form requesting its payment. It also does not appear disputed that he verbally advised his co-workers of the denial of his claim.

The following morning, shortly before 8:30 a.m., which is the start time for the majority of the drivers, some fifty to sixty drivers gathered in the cafeteria. They did not go to their work stations at the appointed time, but rather remained in the cafeteria, making it clear that they would not commence work until they had an explanation of the refusal to pay Mr. Coulombe's ticket, as well as a clarification of the Company's policy in general in respect to the payment of such tickets. Mr. Dean Cardi, the P&D Manager of the Montreal terminal, was advised by Local Protective Chairman Rend Pichette that there was a problem, and that the employees were in the cafeteria. It may be noted that Mr. Pichette had previously warned the employees that their actions could constitute an illegal work stoppage, and result in discipline. As a result, following his advice, employees with high accumulations of demerits proceeded immediately to their jobs. It appears that Mr. Cardi advised the employees in the cafeteria that he would have allowed the payment of the ticket, but that it was declined by Regional Manager Bob Dupuis. He then called Mr. Dupuis by telephone, advising him of the problem, and requesting that he attend immediately at the terminal. When Mr. Cardi advised the drivers that Mr. Dupuis was on his way, Mr. Pichette told the drivers that they should go back to work, and that they could take the matter up with Mr. Dupuis when he arrived. Notwithstanding Mr. Pichette's direction, the employees remained in the cafeteria.

Mr. Dupuis arrived at the terminal shortly before 9:00 a.m. and met with the drivers in the cafeteria. He then agreed to pay Mr. Coulombe's ticket, at which time the drivers returned to work. At that point Mr. Pichette suggested that the drivers should forego their breaks to help minimize the impact of the work stoppage.

Subsequently, the Company conducted disciplinary investigations, assessing twenty demerits against the employees whom it found to have participated in the work stoppage. The Union's representative submits that it is excessive to treat the incident in question as a work stoppage. He points, in part, to the evidence of certain employees given during the course of their interview, indicating that they were, in effect, told by Mr. Cardi to stay in the cafeteria pending Mr. Dupuis' arrival. He stresses that Mr. Cardi at no time issued a directive to the employees that they should proceed to work. On his interpretation, the event was not so much a protest of Mr. Coulombe's treatment as a general wish on the part of the employees to obtain a clarification of a Company policy on the payment of "no truck" zone tickets by the Company.

The Arbitrator has some difficulty with the Union's characterization of these events. The evidence is clear that spontaneously, and for reasons which only they can appreciate, a substantial number of employees refused to commence work on the morning of October 30, 1997. The object of their concern was obvious, triggered by the treatment of Mr. Coulombe.

It should be stressed that there is no suggestion that the Union or its officers had any involvement in organizing or encouraging the work stoppage. On the contrary, as noted above, Local Protective Chairman Rend Pichette made all reasonable efforts to prevent the work stoppage, first by warning the employees as to the consequences, secondly by telling the drivers to go back to work after Mr. Cardi had advised that Mr. Dupuis was on his way and, lastly, by suggesting that drivers forego their breaks to make up for the lost time. By all accounts, Mr. Pichette did everything which a responsible Union leader can do in such circumstances, using his best efforts to minimize the extent, duration and effect of the work stoppage.

The issue then becomes the appropriate measure of discipline. The Company draws to the Arbitrator's attention the award in **CROA 1397** wherein discipline was sustained against a substantial number of employees at the same terminal for an unlawful work stoppage when employees called in sick in a concerted fashion. In that case the assessment of twenty demerits was deemed appropriate, given the gravity of the offence. The seriousness of illegal work stoppages was commented upon by the arbitrator in **Re Canadian National Railway Co. and International Association of Machinists and Aerospace Workers** (1990), 15 L.A.C. (4th) 240 (M.G. Picher). At p. 248 the following appears:

It is well settled that participation in an unlawful strike, and in particular the organizing and promoting of such a work stoppage, is deserving of the most serious degree of discipline: see *Re US. W. and Aerocide Dispensers Ltd.* (1965), 16 L.A.C. 57 (Laskin); *Re Iron Ore Co. of Canada and U.S. W.*, Loc. 5795 (1975), 11 L.A.C. (2d) 16 (Harris); *Re Douglas Aircraft Co. of Canada Ltd and UA. W.*, Loc. 1967 (1975) 8 L.A.C. (2d) 118 ((O'Shea); *Re Liquid Carbonic Canada Ltd. and U.S. W.*, Loc. 12998

(1977), 16 L.A.C. (2d) 284 (Kennedy). In more recent years, however, it has come to be accepted that, as in any case of discipline, the conduct of individual employees in respect of an illegal work stoppage must be assessed on its own merits and, in relation of any other mitigating factors that may be appropriate. In other words, discharge is not necessarily an automatic and exclusive disciplinary response to an employee's involvement in an illegal work stoppage: see *Re St. Peters Hospital and C. U.P.E.*, Loc. 778 (1981), 1 L.A.C. (3d) 106 (Swan); *Re Cameo Inc. and U.E. W.*, Loc. 550 (1988), 34 L.A.C. (3d) 12 (Barton). When regard is had to the evidence before me, I can see no basis, save the case of Mr. Rend Pichette, for any adjustment in the discipline assessed. In considering that question it is notable that several of the drivers implicated in this work stoppage were also involved in the work stoppage resulting in the decision in **CROA 1397**. In the Arbitrator's view it is imperative that employees understand that under Canadian law the system of grievance and arbitration is the sole method available for the resolution of work disputes during the term of a collective agreement. That principle is at the very foundation of a stable and responsible collective bargaining system.

As noted above, there is an exception to be made in the case of Mr. Pichette, who was also assessed twenty demerits. On the evidence before me it is amply evident that Mr. Pichette used his best efforts to prevent the work stoppage from happening, both by counselling employees with serious discipline to proceed to work, and by directing the employees to go to work when it was clear that Mr. Dupuis was coming to the terminal. It must be

appreciated that in such a circumstance a Union Protective Chairman is in a difficult position, and may, as in the case of Mr. Pichette, be compelled to remain on the scene to function as a facilitator and problem solver. Given what occurred, it is not, in the Arbitrator's view, appropriate that Mr. Pichette receive any discipline for what transpired.

The grievance is therefore allowed, in part. The discipline as against all employees, save Mr. Pichette, is sustained. The discipline assessed against Mr. Pichette shall be removed from his record forthwith.

March 13, 1998

MICHEL G. PICHER
ARBITRATOR