

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3319**

Heard in Montreal, Tuesday, 14 January 2003

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

UNITED STEELWORKERS OF AMERICA (LOCAL 1976)

DISPUTE:

The dismissal of Intermodal Services Groundperson M. Giovinazzo.

JOINT STATEMENT OF ISSUE:

On May 30, 2002, while on duty, the grievor was involved in a single vehicle accident while operating a Company's vehicle on Company property at the Vaughan Intermodal Facility, resulting in \$15,847.48 of damage and the subsequent write-off of the vehicle.

The Union is of the view that the Company did not properly evaluate all of the relevant facts in the matter and that in all of the circumstances the discipline assessed to Groundperson Giovinazzo was an excessive and unreasonable penalty and should be substituted with a lesser penalty, with the grievor being returned to service with compensation for all lost wages and benefits.

The Company maintains that during the Company's investigation Mr. Giovinazzo provided false and misleading information and that the grievor also provided false and misleading information to police officers both from the Company and York Regional Police, who initially attended to the accident scene. The Company maintains the position that the grievor's responsibility was established and the discipline assessed was warranted and appropriate.

The Company declined the grievance.

FOR THE UNION: FOR THE COMPANY:
(SGD.) N. LAPOINTE (SGD.) R. SABOURIN
PRESIDENT FOR: DIRECTOR, INTERMODAL SERVICES

There appeared on behalf of the Company:

R. Sabourin – Labour Relations Officer, Calgary
J. Worrall – Labour Relations Officer, Calgary
R. Weir – Director, Intermodal Operations – Eastern Canada

And on behalf of the Union:

S. Haddon – Eastern Governing Board, Montreal
R. Pagé – Staff Representative, Montreal
M. Giovinazzo – Grievor

AWARD OF THE ARBITRATOR

It is not disputed that the grievor was negligent in the operation of a Company vehicle while on duty on May 30, 2002. At the arbitration hearing the grievor explained that he had left his work

site in the Vaughan Intermodal Facility to proceed to the north side to make use of the bathroom facility. He relates that while he was there he received an urgent radio communication to return to the work site. Mr. Giovinazzo explains that he then rushed back to his truck and proceeded at excessive speed on the roadway within the yard, failing to correctly judge a curve in the roadway. As a result his pickup truck skidded off the road and into the ditch, resulting in the write-off of the vehicle and personal injuries to himself.

Unfortunately, the true account of these events only emerged at the arbitration hearing. As is evident before the Arbitrator, both at the time of the incident and during the disciplinary investigation conducted by the Company the grievor attempted to mislead the Company's investigators as to what had truly occurred. During his earlier statements Mr. Giovinazzo initially asserted that he had been cut off by a truck while driving on the roadway in the intermodal yard. When it became evident that the Company had eye-witness accounts from two individuals confirming that there was no other traffic on the roadway when his vehicle went into the ditch, the grievor then changed his account to suggest that he might have been distracted by a chassis rather than another truck, it being understood that chassis are parked along the side of the roadway in question. However, based on the skid marks and the location of the accident the Company formed the view that the grievor's vehicle got into trouble at a point on the roadway where there would have been no parked chassis. Only at the arbitration hearing did the grievor admit that his own driving at a high rate of speed caused the accident.

It is therefore established that the grievor drove at excessive speed and in a careless manner causing the total destruction of a Company vehicle. More significantly, he consistently lied to Company officers to conceal his own responsibility for the incident. While at the arbitration hearing he explained his actions on the basis of the fact that he feared for his job, the fact remains that he has put both the Company and the Union to the burden of handling this dispute through the various stages of investigation and the grievance procedure while all the while concealing his own responsibility. Although at the arbitration hearing he maintained that he was sorry for what occurred, it is difficult in the circumstances to determine whether his regret is more motivated by concern for the consequences he may face or a genuine concern for the Company's interests and maintaining a positive relationship with his employer.

Unfortunately there are few mitigating circumstances to justify a reduction of the discharge in the case at hand. The grievor is not a long service employee, having only five years of service at the time of the incident. While his disciplinary record was clear, it is difficult for the Arbitrator to disregard the Company's fundamental concern, namely that the grievor was untruthful from the outset of the incident, at least to the date of the arbitration, the first occasion he chose to admit the truth of what happened. The Company's representative submits that in the circumstances the Company has lost confidence in the grievor, and that his repeated falsehoods over a substantial period of time concerning the incident have effectively broken the bond of trust essential to the employment relationship. Regrettably, the Arbitrator must find the Company's concerns are well founded, that there are no compelling mitigating factors and that this is not an appropriate case for a substitution of penalty.

For all of the foregoing reasons the grievance must be dismissed.

January 17, 2003

MICHEL G. PICHER
ARBITRATOR