CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2367

Heard at Montreal, Wednesday, 12 May 1993

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The assessment of sixty (60) demerits and dismissal of employee G. Coulombe, CanPar, Montreal, Quebec.

UNION'S STATEMENT OF ISSUE:

By notice dated December 15th, 1992, employee G. Coulombe was advised to be present for an interview on Thursday, December 17, 1992 at 5:00 p.m. for allegedly falsifying time card on December 9th, 1992, violation of Rule 10E of the Drivers Manual.

By notice dated December 23rd, 1992, this employee was advised sixty (60) demerits have been assessed to his personal file. On the same date a letter signed by J. Poirier, Manager P&D addressed to employee G. Coulombe advised him that he was being dismissed effective upon receipt of this letter.

The Union asserts the statement signed by Mr. Raymond Muir, given to the Union along with all other documents is not the same as the one shown to the employee or his representative at the interview.

The Union also asserts the charges of falsification of time card on December 9th, 1992 were not sustained at the interview held on December 17th, 1992.

The Union also asserts the Company visited the customers at Carrefour Laval on December 18th, and again on December 21st, 1992 in order to sustain the charges.

The Union also asserts the Company did not hold a further interview or reopen the original interview to present the information from the customers of Carrefour Laval.

The Union further asserts the Company used the information received by visiting the customers on December 18th, and 21st, 1992 to assess the sixty (60) demerits and dismiss employee G. Coulombe.

The Union grieved the assessment of sixty (60) demerits and the dismissal requesting the removal of the sixty (60) demerits and reinstated with full compensation with interest, and full seniority and benefits.

The Company declined to remove the demerits and reinstate the employee.

FOR THE UNION:

(SGD.) J. CRABB
EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company [among others]:

G. Gagnon	– Counsel
P. D. MacLeod	– Director of Terminals, Toronto

[TRANSLATION]

And on behalf of the Union [among others]:

M. Church	– Counsel, Toronto
J. J. Boyce	– National Vice-President, Ottawa

On Thursday, 10 June 1993, there appeared on behalf of the Company:

G. Gagnon	– Counsel
P. D. MacLeod	– Director of Terminals, Toronto
R. Dupuis	– Regional Manager, Montreal
J. Poirier	– P&D Manager, Montreal
J. Bordeleau	– P&D Supervisor, Montreal
R. Muir	– Witness

And on behalf of the Union:

K. Cahill	– Counsel, Montreal
J. Marr	– Vice-President, Saint John
G. Coulombe	– Grievor

AWARD OF THE ARBITRATOR

The Arbitrator cannot accept the claim of the Union to the effect that the Company violated the terms of article 6 of the collective agreement. The evidence establishes that the sole subject of the interview of December 17, 1992 was the activities of Mr. Coulombe during the period of time for which he had written "no lunch" on his work summary sheet for December 9, 1992. It is true that the letter of discharge could have been more precise concerning the particular reason for the discharge, and it leaves open to discussion the possibility of believing that the grievor was disciplined for having taken his coffee breaks at noon hour. However, the Union has not established, to the satisfaction of the Arbitrator, that the terms of article 6.5 are mandatory. It is to be noted that the consequences of not conforming to the conditions of article 6.5 are not articulated in the collective agreement, as is the case for articles 6.2 and 6.3. Furthermore, in the Arbitrator's view, the employer did conform to the requirements of article 6 as it concerns its obligation to provide copies of the documentation to the Union. during and after the interview.

As to the issue concerning the justification for the penalty of discharge, the position of the Company is less compelling. The Arbitrator accepts that the employee did not respect the rules of the Company concerning breaks. In the Arbitrator's view, Mr. Coulombe ought to have declared at least a part of the forty-five minutes in question as a meal break. However, the evidence of the Company leaves something to be desired. It did not clarify the activities of Mr. Coulombe for the period in question, and leaves in substantial doubt his intention to knowingly defraud his employer. I thing that the grievor is guilty of negligence rather than of fraud.

For these reasons, and given the discipline record of Mr. Coulombe, I judge that there is reason to reduce the disciplinary penalty. The grievor shall be reinstated into his employment, without compensation for his loss of wages and benefits and without loss of seniority. His discipline file will stand at forty-five demerits. Mr. Coulombe must, however, appreciate the importance of filling out his time card in a precise and complete fashion in the future, and that another similar infraction could justify a more severe disciplinary penalty.

June 11, 1993

(signed) MICHEL G. PICHER
ARBITRATOR