CANADIAN RAILWAY OFFICE OF ARBITATION

CASE NO. 2655

Heard in Montreal, Wednesday, 13 September 1995

concerning

INTERLINK FREIGHT SYSTEMS

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Port Coquitlam employee S. Sarai, had two (2) clearance accidents with a Company vehicle, July 18th, 1994/ July 27, 1994. The Company issued him forty demerits for each accident, and he was dismissed due to the accumulation of demerits. The Union grieved the eighty (80) demerits as being excessive, and requested that Mr. Sarai be reinstated.

UNION'S STATEMENT OF ISSUE:

The Union filed a grievance at Step 2, stating the discipline was excessive, as the Company's recommended discipline for this type of accident is 15 demerits.

The Union reviewed Mr. S. Sarai's discipline record and noted that he was not credited with the ten (10) merits for accumulated six (6) months' accident free period, from February 17, 1993 to March 6, 1993 and January 24, 1994 to July 18, 1994. Had he received credit for the merits his discipline record would have shown thirty (30) instead of forty (40) the Company show on their July 17, 1994 records.

The Union requested that Mr. Sarai be reinstated, without loss of seniority and compensated for all wages and benefits lost. It was suggested that he should be suspended from driving for a definite period of time, with an opportunity to review the driving restriction upon completion of his suspension and placed into a defensive driving course if it was deemed appropriate.

The Company declined the Union's request.

FOR THE UNION:

(SGD.) D. E. GRAHAM
DIVISION VICE-PRESIDENT

There appeared on behalf of the Company:

M. D. Failes	– Counsel, Toronto
B. F. Weinert	– Director, Employee Relations, Toronto

And on behalf of the Union:

H. Caley	– Counsel, Toronto
D. Dunster	– Executive Vice-President,
A. Kane	– Local Protective Chairman, Vancouver
R. Nadeau	– Divisional Vice-President, Quebec Division
S. Sarai	– Grievor

AWARD OF ARBITRATOR

It is not disputed that the discipline which led to the grievor's termination arose out of two preventable motor vehicle accidents which occurred on July 18 and 27, 1994 respectively. The first accident involved the grievor's truck hitting the side of an underpass while travelling westbound on Marine Drive in North Vancouver, causing some $4,000 in damages. The second accident involved the grievor backing his vehicle into the tractor of another Company vehicle while parking in the B.C. Liquor yard.

For the purposes of this grievance the Arbitrator is satisfied that Mr. Sarai's prior disciplinary record must be taken to have stood at 30 demerits, having regard to a fair application of the Company's policy of forgiving demerits for periods of six months and one year free of discipline or accidents. As noted above there is no dispute as to the grievor's responsibility for the two accidents which became the culminating incidents, resulting in the assessment of forty demerits for each incident, and the grievor's ultimate discharge.

In support of the grievor, counsel for the Union stresses the length of his prior service, noting that he was hired in May of 1981. The grievor himself raises certain mitigating factors with regard to the incidents in question, noting that different equipment might have been assigned for the delivery given to him in the first instance, and that he may have been obscured by the reflection of the sun while backing his unit in the B.C. Liquor yard. However, the Arbitrator can attach very little weight to those factors. I am satisfied, on the whole of the evidence before me, that both of the accidents in question were preventable and that they were the direct result of the Mr. Sarai's negligence in operating his equipment.

It is further submitted that the assessment of forty demerits for each of the incidents is excessive in the circumstances. The Arbitrator has a degree of sympathy for that argument. It may be noted that the assessment chart utilized by the Company for the determination of demerits assigns a suggested scale of fifteen demerits for misjudging a clearance or a side-swipe. It is difficult, in light of the evidence, for the Arbitrator to accept the submission of the Company to the effect that the grievor should be subjected to the doubling of demerits based on prior similar accidents, the two most recent of which had occurred in January and February of 1993. The Company's policy on the doubling of demerits states that there should not be doubling if the previous offence has been cleared by the removal of demerits, presumably for periods of accident and demerit free service. The disciplinary record for the grievor placed before the Arbitrator is not in the form of a single document, and it is not clear whether the incidents of January and February of 1993 were in fact cleared from Mr. Sarai's record at the time of the two culminating accidents of July, 1994. From the standpoint of the application of the Brown System, however, the resolution of that matter is not pertinent to the role which must be played by the Arbitrator in a case of this kind. Firstly, as regards the concept of progressive discipline, the assessment of fifteen demerits for each of the incidents in question would place the grievor in a dismissable position, in any event.

The real substance of the grievance is to determine whether this is an appropriate case for the application of the Arbitrator's discretion to substitute a lesser penalty. In the instant case that is a difficult exercise. On the positive side of the ledger Mr. Sarai has a reasonably lengthy period of service spanning some thirteen years prior to his discharge. During that time on at least four different occasions it appears that he was able to perform to the standard of accomplishing one year of service free of any accidents or demerits, the most recent being in 1988.

The negative side of the ledger is, however, substantially weighted. The grievor's record discloses some thirteen instances in which he was involved in motor vehicle accidents of one kind or another during the course of his service. A disturbing number of these, numbering nine, involved the misjudging of clearances, resulting in some damage to Company equipment. Unfortunately, the pattern of accidents shows them to be spread evenly over the years of Mr. Sarai's service to the Company, with incidents having occurred in 1981, 1982, 1984, 1985, 1989, 1991, 1993 and 1994. Nor can it be said that the Company did not make reasonable efforts to rehabilitate the grievor by the application of progressive discipline. Demerits were assessed for all of the incidents recorded and, in addition, in September of 1989 the grievor was restricted from driving for a period of six months. Unfortunately, none of these efforts appear to have corrected his propensity for preventable accidents.

In the circumstances the Arbitrator finds it difficult to identify mitigating factors which would justify a substitution of penalty. This is particularly so in light of the fact that Mr. Sarai was involved in some four accidents between January of 1993 and July of 1994. If the grievor's record discloses nothing else, it is that all previous efforts at discipline, spanning some thirteen separate accidents during the years of his service, have failed to improve the degree of care which he brings to his driving work. With a record such as his, and having previously been removed

from driving duties for six months, Mr. Sarai knew, or reasonably should have known, that any recurrence of the pattern of preventable accidents which has marked his employment could have the most serious of consequences. Regrettably, that is what has occurred. In the result the Arbitrator is left with the conclusion that there is no meaningful basis to believe that the substitution of any other penalty would have a significant rehabilitative effect.

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

September 15, 1995 **(signed) MICHEL G. PICHER**
ARBITRATOR