

IN THE MATTER OF AN AD HOC ARBITRATION

BETWEEN

CANPAR EXPRESS INC.

(The "Company")

AND

UNITED STEELWORKERS - LOCAL 1976

(The "Union")

Regarding the Termination of C. Kapongo

Date: September 27, 2021

Arbitrator: Johanne Cavé

Appearances for the Company:

Patrick-James Blaine	- General Counsel
Jeff Guile	- National Director of Operations
Joel Andre	- Director, Human Resources and Labour Relations
Russel Paul	- Human Resources Business Partner

Appearances for the Union:

Glen Rankine	- National Business Agent
Annie Daigneault	- Representative
Clovis Kapongo	- Grievor

Hearing held via Videoconference on November 15, 2021

AWARD

1. On October 20, 2015, the Company entered into a Contractor Agreement (the “Agreement”) with Ogetrac Logistics Ltd. (“Ogetrac”), duly represented by its owner, the Grievor, for transportation services. As a result of the Agreement, the Grievor was an Owner Operator covered by the applicable collective agreement (the “Collective Agreement”).
2. The Grievor initially worked the one route assigned to Ogetrac. In August 2019, the Company awarded Ogetrac a second route. Around that time, Ogetrac hired two drivers (the “Drivers”) and the Grievor stopped performing driver work. He moved to the United States in or around November 2019 and managed the Drivers from there.
3. On March 11, 2020, the Company terminated the Agreement without notice, for “false and misleading declarations of compensation”, which it says constitutes a default under the Agreement. This automatically resulted in the Grievor’s termination as an Owner Operator.
4. The Union filed a Step 2 grievance on September 21, 2020 (the “Grievance”), alleging that termination of the Agreement was excessive discipline considering that the Grievor relied on his Drivers’ time reporting to submit claims to the Company and trusted those to be accurate.
5. The Company raises a preliminary objection, arguing the Grievance is untimely.

Preliminary Issue – Timeliness

6. Article 20.8 of the Collective Agreement provides that grievances must be filed within 42 calendar days of the notice of dismissal.

7. As mentioned above, the Company terminated the Agreement on March 11, 2020. On March 23, 2020, less than forty-two days after the termination, the Union asked to extend the time limit to file a grievance to May 15, 2020. On the same day, Company Officer Fuaco granted the extension.

8. At the hearing, the Union filed an email dated August 19, 2020, addressed to Company Officer Fuaco, seeking a second extension to file its grievance until September 30, 2020. The evidence shows that Officer Fuaco replied the same day, granting the second extension.

9. The Company argues that it was not aware of this prior to the hearing and that, if Officer Fuaco granted the second extension, he may not have realized that an initial extension had already been granted. According to the Company, the Union had already exceeded the first extension to May 15, 2020, and therefore was too late to obtain a further extension. The Company submits that, if an extension was granted on August 19, 2020, it should be considered invalid.

10. I reject the Company's timeliness objection. There is no evidence to suggest that Company Officer Fuaco approved the second request for an extension without authority. Moreover, the fact that the second extension was requested and granted after the deadline for the first extension had expired does not make it invalid. The Union is entitled to rely on the second extension of time granted by Officer Fuaco.

11. The Union filed the Grievance on September 21, 2020, some nine days before the expiry of the second extension granted by the Company, i.e. September 30, 2020. Therefore, the Grievance is timely.

Was Termination Excessive?

12. The Union argues that termination of the Agreement is excessive discipline, as the Grievor relied on his Drivers' time reporting and until the Company alerted him to discrepancies, the Grievor was unaware of any.

13. At issue are the hours claimed by one of the Drivers over approximately 19 workdays, from January 14 to February 7, 2020. In cross-referencing the Grievor's claims with the time-stamped pictures taken by parking surveillance cameras, the Company observed that the time claims included hours when the Driver's work vehicle was parked in its lot. The Company submits that the Driver could not be working when his delivery vehicle was parked.

14. On March 4, 2020, the Grievor was interviewed regarding the hours invoiced for the work performed by his Drivers. The Grievor indicated that he does not receive a copy of the Drivers' daily timecards, which they send directly to the Company. However, he stated that the Drivers send him a daily breakdown of their hours worked, which he looks at and questions before submitting invoices to the Company.

15. When questioned during the interview on the daily schedule and activities of the Driver at issue, the Grievor did not appear to be well informed. For example, the Grievor was not aware that the Driver was booking his lunch breaks at the end of his workdays, as shown on his timecards. Similarly, the Grievor was not aware that the Driver had

claimed between 1.5 to five extra hours for most, if not all, the workdays at issue. Based on the information provided by the Company during the investigation, the Grievor recognized that his Driver was “doing something wrong” in the reporting of hours. The Grievor acknowledged that he was responsible to ensure the accuracy of the time he claimed for his Drivers’ work and indicated he needed to look into it.

16. On March 9, 2020, the Grievor sent an email to the Company, indicating he had spoken to his Driver, who confirmed the Company’s assertion that he was booking his lunch and other breaks at the end of his shifts. As for the further discrepancies in his Driver’s end time and the photos showing his delivery vehicle in the parking lot at the end of his workdays, the Grievor suggested that the Company’s surveillance cameras had either been tampered with or had inaccurate time stamps. The Company verified its surveillance cameras and confirmed that the time stamps were accurate. In light of what it considered to be an unsatisfactory explanation from the Grievor for invoicing his Driver’s excessive time claims, the Company terminated the Agreement.

17. While the Grievor was within his rights under the Agreement to hire drivers to provide the delivery service, he was to ensure they did so in a manner consistent with the terms of the Agreement. The Grievor was also responsible for ensuring the accuracy of the invoices he submitted to the Company and was accountable for any discrepancies. However, the evidence shows that the Grievor was not diligent in supervising and reviewing the hours submitted by his Driver, as he was initially unable to provide substantive answers to most of the questions asked of him during the investigation. Importantly, when specific concerns were brought to the Grievor’s attention, he acknowledged an apparent problem with timekeeping. But after taking the

time to discuss the issue with his Driver, he still did not provide a reasonable explanation for the excessive claims. His approach was to deflect blame on to the Company, suggesting that the time stamps on its surveillance cameras were inaccurate. The Union did not raise any issues with the time stamps or rely on this argument at the hearing.

18. Subsection 12(b) of the Agreement provides that the Contractor is considered in default where “any declaration, or guarantee given by the Contractor is false or substantially misleading”. Section 13 of the Agreement provides that, in the event of a default, the Company “may immediately terminate the contract without any notice or any recourse to the Contractor.”

19. There is compelling evidence to show, on a balance of probabilities, that one of the Grievor’s Drivers significantly misrepresented his hours of work from January 14 to February 7, 2020. Specifically, it is improbable that the Driver took no lunch or other breaks during his workdays. However, even assuming approximately one hour per day at the end of his shift made up for lunch and breaks, the Driver still misrepresented his hours for most or all 14 days at issue. On some days, he claimed up to five hours of work for periods of time when his delivery vehicle was parked on the Company lot. As for the Grievor, he failed to take appropriate steps to adequately supervise his Driver and ensure the accuracy of his time reporting. Moreover, when issues were brought to the Grievor’s attention, he failed to provide a reasonable explanation for the discrepancies and to accept accountability. The fact that the Grievor has no prior discipline is a mitigating factor. However, I accept the Company’s argument that by submitting false or substantially misleading claims, which constitutes a default under the

Agreement, the Grievor irreparably breached the bond of trust with the Company, as it relies on its Owner Operators to ensure proper service and reporting.

20. In the circumstances, the Company had just cause to terminate the Agreement.

21. The Grievance is denied.

Dated at Gatineau this 30th day of November 2021.



Johanne Cavé, Arbitrator