

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION**

**CASE NO. 4783**

Heard in Gatineau and via Zoom Video Conferencing on July 13, 2021

Concerning

**CANPAR EXPRESS**

And

**UNITED STEELWORKERS – TC LOCAL 1976**

**DISPUTE:**

The termination of A. Mohamed for a motor vehicle accident and the failure to report.

**JOINT STATEMENT OF ISSUE:**

Abdiazis Mohamed is a P&D driver for Canpar Express. On June 15, 2020, he was involved in a collision while operating a Company vehicle and did not report it to his supervisor.

On July 22, 2020, the Company issued two interview notices to Mr. Mohamed for “MVA, misjudging clearance” and “failure to report an accident at 365 Bloor St. East”.

The two interviews were held on July 24, 2020, as scheduled.

During the interviews, it was revealed that Mr. Mohamed was involved in a collision with a stationary parked vehicle and that he did not report the incident.

Mr. Mohamed admitted he made a serious mistake by trying to hide the collision and asked that the Company give him a chance.

The Company dismissed the grievor.

The Union grieved and asked for leniency, citing Mr. Mohamed’s long tenure (19 years) with the Company.

The Union believes that there are other ways to manage this issue and suggested different solutions including education or reassignment.

The Company denied the grievance.

**FOR THE UNION:**

**(SGD.) G. Rankine**  
National Business Agent

**FOR THE COMPANY:**

**(SGD.) J. Guile**  
National Operations Director

There appeared on behalf of the Company:

- R. Pahl – Human Resources Business Partner, Mississauga
- J. Guile – National Operations Director, Toronto

And on behalf of the Union:

- G. Rankine – National Business Agent, Vancouver
- A. Daignault – Representative, Montreal
- R. Ramjohn – Chief Steward, Toronto
- A. Mohamed – Grievor, Toronto

### **AWARD OF THE ARBITRATOR**

1. The grievor was hired in 2001 in the position of dockperson. While holding that position, the grievor regularly took driving shifts when available. In April 2019, he bid on and obtained a P&D (pickup and delivery) driver position. He was fully trained for this position, including on the Company's accident reporting procedure.

2. On June 15, 2020, the grievor was involved in a collision while driving a Company vehicle, whereby he struck a parked car. He left the scene without leaving a note or coordinates for the car owner. The car owner reported the accident to the Company the next day. When questioned during the investigation as to whether he had been involved in an MVA, the grievor responded that he was not sure. He acknowledged the accident only after he was shown the video recording of the collision. When asked why he did not report the accident to his supervisor, as required by Company procedure, he initially indicated that he did not have enough information about the car. After acknowledging that the car had a licence plate number which he could have provided, he indicated that he had meant to report the accident but got busy and forgot. The grievor was assessed 15 demerit points for the motor vehicle accident (MVA). He was also assessed 20 demerit points for failing to report the accident. This culminating incident, which resulted in the assessment of a total of 35 demerit points,

brought the grievor to a grand total of 94 demerit points, leading to his discharge on July 29, 2020.

3. At the time of the culminating incident, the grievor's active discipline record stood at 59 demerit points, as a result of the following:

- 15 demerit points for an MVA which occurred in May 2019, 20 demerit points for his failure to report that accident and 10 demerit points for causing an injury as a result of not being aware of his surroundings;
- 5 demerit points removed from his record in November 2019 for reaching six months without discipline;
- 19 demerit points further to receiving a ticket for careless driving after failing to stop at a stop sign in December 2019. The discipline form filled out by a Company officer and signed by the grievor states, in part: "should be 20 demerits, but reduced to 19 demerits to avoid termination".

4. The Union seeks leniency in favour of the grievor. It argues that mitigating factors should be considered when reviewing the culminating incident and assessing discipline. Specifically, it contends that at the time of the culminating incident, the grievor was experiencing stress due to various causes. Notably, he was sitting at 59 demerit points, he was working long hours due to the dramatic increase in freight volumes during the COVID-19 pandemic and was dealing closely with the public during this difficult time. He was also going through a marital breakdown. According to the Union, the stress led the grievor to make a bad judgment call in not reporting the accident.

5. The Union also submits that consideration should be given for the grievor's long service (19 years), his age (51 years old) and the low chances of him finding a similar job to support his family.

6. For the reasons outlined below, there is no basis to interfere with the Company's decision to discharge the grievor.

7. I find that the Company's assessment of 15 demerit points for the MVA and 20 demerit points for failing to report the accident is reasonable, based on the precedents cited by the Company for similar infractions. In any event, because the grievor sat at 59 demerit points prior to the June 15, 2020 events, any amount of demerit points assessed for either one of the two infractions that day would have brought him at the 60 demerit points threshold constituting just cause for termination under the applicable Brown Demerit System of discipline.

8. Also, the culminating incident of June 15, 2020 was not isolated. This was the grievor's third driving incident and his second failure to report an accident in just over one year. This suggests a serious lack of attentiveness by the grievor while performing his driving duties, along with a blatant disregard for the Company's accident reporting procedures and for the impact that his actions may have on the Company's reputation and insurance claims. This would suffice to maintain the grievor's discharge.

9. The fact that the grievor was not forthcoming about the June 15, 2020 accident until he was confronted with the video recording of the collision, and his deceptive justifications for his failure to report the accident, constitute aggravating factors that outweigh the mitigating factors raised by the Union.

10. Finally, the Company already granted the grievor leniency when assessing discipline in December 2019, protecting him from discharge. In view of his conduct in dealing with the June 15, 2020 accident, the grievor is not deserving of further leniency.

11. I accept the Company's position that the bond of trust has been broken beyond repair.

12. The grievance is dismissed.

July 27, 2021



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**JOHANNE CAVÉ**

**ARBITRATOR**