

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 34

Heard at Montreal, Monday, April 18th, 1966

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

and

**BROTHERHOOD OF RAILROAD TRAINMEN**

### DISPUTE:

Dismissal of Conductor J. Cartwright and Brakemen T.P. Jones and P. Woitas for refusal to carry out regular duties, Port Alberni, B. C., May 21st, 1964.

### JOINT STATEMENT OF ISSUE:

These three employees were members of a train crew in pool service called for 5:30K to switch at Port Alberni, B.C., before leaving for their home terminal at Wellcox, B.C. Switching commenced on time and progressed according to work listed until the crew was required to lift 6 cars from the Salt Spur of the Somass Division plant of MacMillan, Bloedel and Power River Industries (Alberni) Ltd. The crew refused to perform the switching because the cars to be lifted were on a track in a strike-bound plant.

After refusing to perform the switching, the crew was instructed to work their train back to Wellcox where they were taken out of service for investigation. On the following day, May 22nd, they were informed of their dismissal for refusal to carry out regular duties.

The Brotherhood of Railroad Trainmen has requested the reinstatement of these employees with full payment for all time lost which the Company has declined.

### **FOR THE EMPLOYEES:**

**(SGD.) S. MCDONALD**  
**GENERAL CHAIRMAN**

### **FOR THE COMPANY:**

**(SGD.) A. M. FRASER**  
**GENERAL MANAGER**

There appeared on behalf of the Company:

J. G. Benedetti	– Supervisor, Labour Relations, Vancouver
C. F. Parkinson	– Labour Relations Assistant, Montreal
H. G. McGinn	– Assistant to Manager Labour Relations, Montreal
W. R. McCracken	– Superintendent, Vancouver

And on behalf of the Brotherhood:

S. McDonald	– General Chairman, Calgary
H. J. Douglas	– Local Chairman, Victoria

### AWARD OF THE ARBITRATOR

Because of Mr. McDonald's frank admission that the employees concerned were at fault in their refusal to assist in moving cars from a strike-bound plant, it is unnecessary to give more than a brief recital of the facts.

Following the breakdown of contract negotiations between MacMillan, Bloedel & Powell River Company and the Office Employees International Union, a strike was called at the Port Alberni operation. Immediately picket lines were established at various operations of this Company.

The Port Alberni plant is provided with rail service by Canadian Pacific by means of industrial tracks into the various sections of the plant. Switching operations commenced on the morning in question at the Port Alberni yard. When a move was made eastward on the main line for the purpose of proceeding to the salt spur in the Somass plant, where the next work was listed, a stop was made at the west main line switch. At that point Conductor Cartwright informed Assistant Superintendent that he did not wish to proceed into the salt spur to lift cars because he considered they were "hot cars", due to their being on a track of a strike-bound plant which was being picketed. Trainmen Waitas and Jones also advised they would not perform the required switching for fear of reprisal. Similar action was taken by the fireman. The engineer continued to perform his regular duties.

There were no pickets either near or in the immediate vicinity of the Somass Division plant. In the investigation that was subsequently held these employees admitted being counselled as to the possible serious consequences of their refusal to carry out their duties.

As indicated they were discharged.

The Union's recognition of the blameworthy conduct of these employees was disclosed in a letter from the General Chairman to the General Manager of the Pacific Region of the Company on December 29, 1965. It read in part:

While Cartwright and crew did not fully understand the position they were placing themselves in at the time of the occurrence at Port Alberni, I can assure you that I made it very clear to them personally that they had placed themselves in a position of refusing to carry out their regular duties without justification. I advised you of this in my letter of February 26, 1965, and this crew fully realizes now that the existing circumstances did not warrant refusal to carry out their regular duties.

The basis of Mr. McDonald's plea for these employees was that the penalty of discharge was too harsh in the particular circumstances. While admitting there was no immediate danger of physical harm at the site on the occasion in question, it was stressed that the total work force of approximately 3,000 employees were actually on strike as result of their refusal to cross picket lines. The town has a population of approximately 17,000. It was said the members of these unions pride themselves on their militancy and an explosive situation already existed because feelings were running high. While pickets were not immediately visible, when the assistant superintendent and another employee later took the engine into the property, some quickly appeared to find out what was going on and who was doing the switching.

Mr. McDonald stressed the action taken by the Company against these employees was excessive in comparison with penalties imposed for comparable blameworthy conduct. He pointed to the fact that on the following day, when strikers were milling around this plant, a crew who had refused to switch this same property, were given a penalty of 20 demerit marks against the conductor and 10 demerit marks against each of the two brakemen.

Feelings ran high among employees of the railway because of the penalty imposed on these employees. The following day only seven men were available for duty on the Esquimalt and Nanaimo Railway, 25 having booked sick.

In February, 1964, Mr. McDonald related, a yard crew in Vancouver Terminal refused to handle so called "hot cars" that had been received from the Pacific Great Eastern Railway at North Vancouver where a trainmen's strike was in progress. When this crew was taken out of service for investigation an epidemic of booking sick broke out among all branches of the service. Within 24 hours not a single yardman was available for service at the terminal.

That crew received demerit marks but no employee was dismissed.

A similar situation arose in July. This incident did not result in the dismissal of any employee.

In September, 1965, a strike of the Oil and Chemical Workers Union caused employees of this railway to refuse to cross picket lines. The Company apparently recognized the fear these employees had of reprisals against themselves, their wives, or personal property. There it was arranged that supervisory officers would take over from train crews when picket lines had to be crossed to perform switching.

In that case there was no dismissal. Demerit marks were assessed.

During the course of the lengthy strike involving the Oil and Chemical Workers, an incident occurred at Kamloops, British Columbia, with employees refusing to cross picket lines. Again each of the crew was given 20 demerit marks.

Mr. McDonald placed particular emphasis upon the case of Conductor J.C. Teel, who at Medicine Hat in 1954 received a debit of 20 demerit marks for "Failing to lift cars after having been instructed to do so". The reason in that case for the refusal was that the employee was tired. He was on duty barely 8 hours at that time and would not have been permitted to book rest until 12 hours on duty.

The result in that case was exactly the same as in these employees' refusal – cars were not moved by those required to do so. In Teel's case, however, Mr. McDonald suggested, there was a wilfulness not present in the case of these employees, if proper consideration had been given to the real opprobrium traditionally suffered by one union member failing to assist other union members in struggles for what they believe to be their economic rights. This, he claimed, was over and above the danger, not unknown in such instances, of personal injury or damage to property.

Mr McDonald also referred the Arbitrator to five decisions of the former Canadian Railway Board of Adjustment dealing with refusal to carry out orders. In two of these dismissal was changed to reinstatement without pay for time lost; in two cases demerit marks that had been assessed were removed. In one the demerit marks were removed and changed to a "caution".

One of these examples, **Case No. 706**, where an engineer had been disciplined by the assessment of demerit marks for refusal to carry out switching operations at a strike-bound plant, the Board held the demerit marks should be removed from his record.

Mr. Benedetti referred the Arbitrator to certain sections of the Railway Act, providing the right of users of the Railway to receive services from Canadian Pacific; that this is an enforceable legal right; if denied without cause, damages may be assessed.

In Mr. Benedetti's view the action taken by these employees would be justified only when a reasonable apprehension existed of injury to themselves, their families or danger to their property; that this reasonable apprehension must be such as can be proved in evidence by facts that show overwhelmingly that substantial grounds existed for the apprehension claimed.

As indicated, the Brotherhood recognizes the position of the Company. The General Chairman had personally made plain to the employees involved there was every right for the Company to impose disciplinary consequences. The question is whether in the circumstances outlined they were such as would warrant dismissal of the conductor who had been employed with this company for fifteen years, Brakeman Jones, who had been with the company eleven years or Trainman P. Woitas, employed with this company for fifteen years – all apparently with unblemished work records.

Again to be weighed is how can the particular circumstances in this incident justify the extreme action taken in the light of examples of much less serious consequences to those similarly blameworthy. Perhaps nothing reduces the general value of disciplinary action as much as uneven justice. I suppose the Company would be quite justified, if they decided to take such action in all cases, to notify their employees that despite the type of penalties that have been imposed in the past, discharge would follow the first refusal of an employee to carry out his duties when they involved crossing the picket line of a strike-bound property. This action would only be taken, I would imagine, after due weight had been given to the traditional loyalty required of employees who are union members when a strike is in progress. Consideration would also have to be given as to whether this type of refusal can be distinguished from a wilful refusal such as described in the case of the employee Teel. Blameworthy, certainly. Deserving of disciplinary action, yes. Discharge for the first infraction? A great deal of thought would indeed have to be given before such a rule came into effect.

Without in any way condoning the action of these employees, because of their long unblemished enrolment with this Company and the lack of circumstances that made their culpability greater than others dealt with, I do not believe discharge was reasonable.

I find, therefore, these three employees should be forthwith returned to their former occupations; that their records show a two weeks suspension without pay from the date of the incident; that they be paid what they would have earned with the Company in the interval from the first day following completion of the suspension period until the date of their return to employment following this decision, less any sum each may have earned in other occupations during that period.

**(signed) J. A. HANRAHAN**  
**ARBITRATOR**