CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 53

Heard at Montreal, Monday, February 13th, 1967

Concerning

PACIFIC GREAT EASTERN RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

EX PARTE

DISPUTE:

Letter of January 21st, 1966, re notice for investigation, also, subsequent notices related thereto; and Dismissal of Trainman I.H. Hoppe, effective June 15th, 1966.

FOR THE EMPLOYEES:

(SGD.) J. W. ROBINSON
GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. E. Richmond	– Personnel Officer, Vancouver
J. A. Deptford	– Regional Manager & Assistant Chief Engineer, Prince George
W. E. Ertman	– Train Yard Co-ordinator, North Vancouver
R. Nielsen	– Personnel Supervisor, Vancouver

And on behalf of the Brotherhood:

J. W. Robinson	– General Chairman, Vancouver
G. C. Gale	– Vice-President, Winnipeg
M. J. Flynn	– Witness

AWARD OF THE ARBITRATOR

It was established that this dispute evolved from a work stoppage on December 3, 1965, in which trainmen and enginemen participated.

On December 17, 1965, Trainman I.H. Hoppe received this notice to attend for investigation, in which the subject matter was:

> Your withdrawal from service on or about December 3rd, 1965 and any and all matters related thereto.

Following this hearing Trainman Hoppe received a disciplinary assessment of 50 demerit marks.

On January 21, 1966, this employee received a further notice to attend for investigation, reading:

> The subject matter of this investigation will be your alleged failure to give the faithful, intelligent and courteous discharge of duty the service demands by condoning and engaging in activities intending to restrict and/or limit the production and service of the Pacific Great Eastern Railway Company.

In pursuance of this notice Trainman Hoppe appeared on the date required, requested and was granted a postponement to January 31st.

On January 31, 1966, the investigation was convened but was terminated prior to its conclusion when Mr. Hoppe walked out of the meeting.

On February 1, 1966, Mr. Hoppe was notified by double registered mail to appear on February 3. This notice read:

> You will appreciate that your action of January 31st, 1966, in refusing to proceed with investigation arranged for that date following advice to you on January 21st, 1966 and your replies of January 24th and January 25th, has created a serious situation.
>
> Because such action by an employee is completely in violation of the Collective Agreement, it constitutes insubordination and therefore cannot, in the circumstances, be condoned by the Company.
>
> In order to establish your position in this matter beyond any question of doubt, you are hereby notified to appear and to proceed with investigation at 10:00K, Thursday, February 3rd, 1966, in my office, subject matter as set out in my former letter of January 21st, 1966.

Mr. Hoppe did not appear on February 3rd.

On May 25th, 1966, Mr. Hoppe was again placed on notice by the Company to appear for investigation on May 31st, the subject matter being the same as originally described.

On the same date Mr. Hoppe received this notice:

> This is notice that your presence is desired at an investigation to be held on Thursday, June 2nd, 1966, at 10:00K at my office in the Administration Building in Prince George.
>
> Subject matter of the investigation will be your act of insubordination in failing to attend an investigation which had been scheduled for 10:00K, Thursday, February 3rd, 1966 and for which you received notice.
>
> If you desire to have an accredited representative of the Brotherhood assist you in accordance with the Collective Agreement, please arrange to have him appear with you at the time and place specified?

Mr. Hoppe did not appear as requested.

This failure lead to a notice of termination of his employment dated June 15, 1966, reading:

> You were notified by double registered letters dated May 25th, 1966 to appear for investigations at Prince George at 10:00K, May 31st, 1966 and at 10:00K, June 2nd, 1966.
>
> You have refused, or neglected, to attend these investigations at which you would have had the opportunity of hearing the evidence of any witnesses and making rebuttal thereto.
>
> This is notice therefore, that effective June 15th, 1966 you are dismissed from the service of the Pacific Great Eastern Railway Company for your act of insubordination in refusing or neglecting to comply with notice given in accordance with the terms of the Collective Agreement.

It was established that 110 trainmen were investigated following the work stoppage. Some were assessed 50 demerit marks and were permitted to return to work, except in the case of accumulation of demerit marks. 22 who were charged not only with withdrawing from service but with picketing were dismissed.

As stated, Mr. Hoppe was one of those charged initially with withdrawal who was assessed 50 demerit marks but was not permitted to return to work. The assessment of the penalty imposed against him occurred on January 17, 1966. Four days later he received the first notice to attend for investigation.

One of the principal arguments advanced for the employee was that an investigation had been carried out in pursuance of the notice of December 17, 1965, that stated as part of the subject matter " … and any and all matters relating thereto." Having conducted an investigation and assessed a penalty, it was urged the Company was precluded from pursuing the subject matter any further; that Trainman Hoppe and those advising him were justified in the action taken because of the vagueness of the language used in the second notice and clearly indicating that the subject matter involved was not that investigated originally. Such a course on the part of the Company was said to be in violation of article 4-2.

A reading of that article reveals nothing that specifically deals with this contention, other than what could be attributed to the sentence appearing in section 2 (d) reading:

> An employee will not be disciplined or dismissed until after a fair and impartial investigation has been held and until the employee's responsibility is established by assessing the evidence produced. …

As to the notice of January 21, it was contended that it did not contain sufficient and reasonable particulars of the offence alleged in order to provide Trainman Hoppe his right to a "fair and impartial investigation"; that the employee concerned was entitled to know when and where the alleged offence being investigated occurred and the Company had a responsibility to provide such particulars in the "subject matter for investigation".

Again a reading of article 4-2 does not disclose any specific requirement as to what the notice should contain. section (d) as outlined does provide a protective cloak for a person in such a situation.

It was established for the Company that the subject matter of the second hearing was not that which had been investigated in pursuance of the notice of January 7th. It concerned activities over and above the employee's personal withdrawal that, in the opinion of the Company, represented conduct that required further investigation and possibly action other than that taken by way of a disciplinary assessment of 50 demerit marks.

It was stated that on receipt of the notice of January 21, Trainman Hoppe contacted his General Chairman. As a result that official arranged for a meeting with the Regional Manager, Mr. J.A. Deptford, to be held at Prince George on January 31, 1966.

In a letter to Mr Deptford dated January 28, requesting this appointment, the General Chairman said:

> The Organisation's position is that the Company has exercised and exhausted their right to any and all action against Mr. I.H. Hoppe, in conducting the January 5th, 1966 investigation. Therefore the subsequent notice to appear for an investigation … places Mr. Hoppe in the position of double jeopardy, which is a violation of the long standing principles of natural justice.

For the reasons stated herein, a second investigation is not acceptable to the Organization. In the event the Company does not agree with the Organisation's position, the only alternative is that this matter be referred to a Board of Arbitration.

Under date of January 31, the General Chairman addressed this letter to Mr. Deptford:

> In view of your position: that you will have to consider my letter of January 28th, 1966, relative to second investigation of I.H. Hoppe, the General Chairman, J.W. Robinson, advises I.H. Hoppe will not be available for proposed (second) investigation, until a reply has been received from you and such has been given our fullest consideration.

Under date of February 1st, 1966, Mr. Hoppe himself was notified by the Company, over the signature of the Superintendent of Operations, to the effect that the position being taken was resulting in a "serious situation" and he was then given a further opportunity to appear.

For the Company it was contended article 4.2(a) placed an obligation upon this employee to comply with its request to attend for investigation. It reads:

> When an investigation is to be held, each employee whose presence is desired will be notified as to the time, place and subject matter.

It was contended that apart from the action taken by the General Chairman, resulting in different communications passing between him and the Company, the employee himself, once notified, is under a personal obligation to comply. It was claimed the privilege of an accredited representative of the Brotherhood being permitted to accompany an employee being investigated gives him no authority to question the propriety of the investigation, but only to ensure that the provisions of the agreement concerning it are properly carried out. If they are not, or if the result is deemed unfair, an orderly method of procedure is provided by way of a grievance to have the result reviewed finally, if necessary, by arbitration.

Dealing first with the contention by the Brotherhood that the notice of January 21st was too vague. I cannot find that its contents would warrant an employee ignoring its requirements to attend. Having complied and attended as he did on two dates, if he believed he was being put in an unfair position because of a lack of details of what was under

investigation, it would have been an easy matter to have asked for particulars and then to ask for an adjournment. Had he taken this course and the Company had refused to amplify the notice or to give such particulars as would permit Mr. Hoppe putting himself in a position to answer the alleged misconduct, that would be a matter for consideration by the Arbitrator as to whether in fact he had received a "fair and impartial investigation."

The investigation which the employee was required to attend in pursuance of the notice of January 24, was eventually held and concluded.

Apart from his failure to attend on January 31st to participate in the investigation outlined in the notice on January 21, for the reasons advanced on his behalf, there can be no defence to his failure to attend the notice of May 25th, requiring his attend to investigate "… your act of insubordination in failing to attend an investigation which had been scheduled for 10:00K, Thursday, February 3rd, 1966, and for which you received notice".

This notice was explicit in describing the purpose requiring his attendance on June 2nd. Had he complied with that notice, this would have afforded him and his representatives every opportunity to press as to the basic cause for his original failure to attend, namely, particulars as to the nature of the matter to be investigated.

In these circumstances I must find the course taken by this employee was ill-advised and represented an act of insubordination constituting just cause for disciplinary action. The imposition of even 10 demerit marks would place him at the point practice has established as meriting discharge. Having in mind the repeated opportunities given him by the Company in the letters they sent, the imposition of a greater number of demerit marks would, in my opinion, be justified.

For these reasons this claim is denied.

(signed) J. A. HANRAHAN
ARBITRATOR