

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 54

Heard at Montreal, Monday, February 13th, 1967

Concerning

PACIFIC GREAT EASTERN RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

EX PARTE

DISPUTE:

Discipline, 40 demerit marks assessed J.W. Robinson for insubordination while on duty as Yard Foreman at North Vancouver on November 8th, 1966; and

Dismissal "due to your services being unsatisfactory account accumulation of demerit marks".

FOR THE EMPLOYEES:

(SGD.) J. W. ROBINSON
GENERAL CHAIRMAN

There appeared on behalf of the Company:

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| 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:

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

AWARD OF THE ARBITRATOR

The facts established that Mr. J.W. Robinson was the foreman on the 8:00K yard shift at North Vancouver terminal on November 8, 1966. His immediate supervisor, Train Yard Co-ordinator W.E. Ertman, reported in writing to the General Co-ordinator concerning his dissatisfaction with Foreman Robinson's work on the date in question, particularly in respect to the delay that occurred in an important barge connection and the switching related thereto. The letter stated:

At 9.30 A.M. date, I approached Foreman Jim Robinson and questioned him why he was in the "A" Yard. In a heated argument that followed I informed him of the time and of a one and a half hour delay to the barge. He replied, "If I wasn't satisfied with the work he was doing that it would be a lot slower in the near future."

He complained about the switch list, etc., and I told Foreman Robinson that if I couldn't lay my work out any better I would turn in my "A" ticket. To this Robinson replied, "Go and ***, I've been around here too long to have someone like you ride me".

I told Foreman Robinson, "Don't ever tell me to *** again," and he said, "I'm telling you, what are you going to do about it." I said, "You may be surprised." He also told me I used to be the laziest *** in the yard and if I were any good I would still be a switchman. With this I walked away and he got on the engine and took off.

While considerable evidence was heard at the investigation and during this hearing in an attempt to justify the course of switching adopted by Foreman Robinson on the morning in question, of governing importance, in my opinion, are extracts from the transcript of the hearing at the investigation. When the switch list was handed Foreman Robinson by Co-ordinator Ertman there was some discussion about the water level of the barge in question. At the investigation Mr. Ertman told:

Foreman Robinson was well aware of the fact that he was required to work a barge at 8:30K.

He was asked:

- Q. Directed to Mr Ertman: Did you have a conversation with Mr. Robinson and ask him "Are you refusing to work the barge?"
- A. Yes, I did.
- Q. Why?
- A. He had made the statement he would work the barge at about 10.30.
- Q. Did you request that Mr. Robinson put in writing that he was refusing to work the barge at the time of the conversation in regards to the list?
- A. Yes, I did.
- Q. Why?
- A. I felt that if he was refusing to work the barge until 10:30K I would want it in writing so that I could submit it as evidence as to why the delay on a barge of two hours.
- Q. When Mr. Robinson stated to you that he would work the barge at about 10.30K what was your reply:
- A. I asked Mr Robinson to work the barge now and this was lined up for 8.30K.

In evidence at this hearing Mr. Ertman described that the delay that occurred could have serious consequences in the operation of the barge, because of tide conditions at its point of destination.

It therefore seems quite reasonable that Co-ordinator Ertman should approach Foreman Robinson to check on his work, and to point out that despite his specific instructions an important barge connection was being seriously delayed.

Apart from the obscenities that were withheld from the quotation of the letter *supra*, which were actually not denied by Mr. Robinson, but claimed he could not recall them; this attitude towards the authority of his immediate supervisor was in my opinion blameworthy and deserving of some disciplinary action.

Over and above that, however, on all the evidence I am convinced Foreman Robinson upon receipt of his switch list and the special instructions given him by his immediate supervisor concerning the barge, indicated an attitude that he would determine when he would deal with the barge, not Mr. Ertman. This, I am satisfied, was clearly established by the delay that actually occurred. The defence offered was not convincing that he could not have accomplished the pulling and loading of the barge in the time required.

Unfortunately for this employee at the time of this occurrence he was already under the handicap of a 50 demerit mark assessment imposed in connection with the general work stoppage that had occurred. The penalty imposed for his insubordination while on duty on this occasion was 40 demerit marks. This, of course, took him over the maximum permitted under the disciplinary system in effect on this railway. Because of that situation it was a time for Mr. Robinson to behave in a manner that would not place himself in jeopardy. It is regrettable that with his years of service and experience in such matters he did not behave in a manner indicating acceptance of the necessity for supervisory direction, having always recourse by way of a grievance for any unfair treatment.

For this reason this claim is denied.

(signed) J. A. HANRAHAN
ARBITRATOR