

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 120

Heard at Montreal, Tuesday, October 8th, 1968

Concerning

**PACIFIC GREAT EASTERN RAILWAY COMPANY**

and

**BROTHERHOOD OF RAILROAD TRAINMEN**

### **DISPUTE:**

Assessment of ten (10) demerits against the record of Conductor N. Popp, effective April 16, 1968, for delay to Train No. 27 at North Vancouver, B. C., April 16, 1968.

### **JOINT STATEMENT OF ISSUE:**

After commencing duty at 21:30K, April 16, 1968, Conductor Popp claimed the Company had violated Article 310 (Appendix "A") of the Collective Agreement in supplying the caboose with a metal teapot rather than an earthenware teapot. Train No. 27 departed from North Vancouver, B. C. at 23:05K.

The Brotherhood has requested removal of the discipline assessed. The Company has declined.

### **FOR THE EMPLOYEES:**

**(Sgd.) R. F. LANGFORD**  
**GENERAL CHAIRMAN**

### **FOR THE COMPANY:**

**(Sgd.) J. A. DEPTFORD**  
**REGIONAL MANAGER**

There appeared on behalf of the Company:

R. E. Richmond – Chief Industrial Relations Officer, Vancouver  
R. K. Rebagliati – Superintendent, Peace River Division

And on behalf of the Brotherhood:

R. F. Langford – General Chairman, Prince George

### **AWARD OF THE ARBITRATOR**

The grievor, an employee of approximately twenty years' seniority and classified as a Conductor, reported for duty at the North Vancouver Yard office at 21:30 o'clock on April 16, 1968. Conductor Popp and his crew were assigned to handle train No. 27, the "Vancouver-Peace" Freight, scheduled to leave the North Vancouver terminal at 22:00 o'clock that evening. On arrival at the caboose on Train No. 27, Conductor Popp checked the supplies and made the discovery that there was no earthenware teapot in the caboose. There was, to be sure, a teapot: but it was a metal teapot, and Conductor Popp was aware that the Company was obliged to supply earthenware.

Article 310 (F) (9) of the collective agreement made between the parties provides, as one of the conditions of the operation of a run-through (pooled) caboose, that the caboose be equipped with certain dishes and cooking utensils and bedding, as set out in Appendix "A" to the agreement. In the list of items set out in Appendix "A" is to be found:

1 Earthenware tea pot

The tea pot supplied in the caboose for Train No. 27 was not earthenware, but metal. The company was plainly guilty of a breach of the collective agreement. Indeed, Conductor Popp discovered as well that there was no dish mop supplied, but he seems not to have made much of an issue of that: enough is enough.

Conductor Popp reported the matter promptly. He then waited for the supplies called for in the collective agreement. It cannot be said that the responsible officials of the company acted decisively, either in the procurement of supplies or in ensuring the dispatch of Train No 21 but eventually the Terminal Supervisor obtained an earthenware teapot from “a private source”, and delivered it to the caboose at 23:00 o'clock. At 23:05 Train No. 27 was on its way, an hour and five minutes late, to be sure, but at least supplied in accordance with the collective agreement (or hopefully so; nagging doubts remain about the dishmop). Conductor Popp was charged with the delay, and assessed ten demerit points.

The particular case, as the parties are frank to acknowledge, is ludicrous, but it nevertheless raises a more general and serious problem: how is the employee to behave in the face of violation of the agreement by the employer. There are three points raised by the Union which must be considered, relative to this question. First, the company was itself in breach of the agreement. Second, Conductor Popp did not want to be responsible for the improper supplies when the train reached its terminal. Third, the collective agreement contains the direction in Article 310 (G) that outgoing trainmen “... will not be required to leave terminals without essential supplies or equipment”.

As to the first point, I have already noted that the company was in breach of the agreement. This breach could have been the subject of a grievance. There is no doubt, from the arbitration cases which have dealt with such matters, that the proper course is for the employee to carry on his work, and to file a grievance with respect to the breach if he so desires. Conductor Popp, however, stated that he did not regard it as a grievance, just a shortage of supplies.

As to the second point, it seems clear that in reporting the deficiencies in supplies, Conductor Popp had done all that he could, and all that he needed to do to relieve himself of any responsibility he may have had. Indeed, Article 310(G) quite plainly contemplates that there may be defects and shortages in supplies, and requires the conductor to report any such at the end of each trip.

As to the third point, I am unable to conclude that the earthenware teapot – or even the dish mop – were “essential” supplies, within the meaning of Article 310(G). In any event, even if the requirement that the train leave on time were somehow a violation of the agreement, it would again be the proper course for the employees to carry out that requirement, and to file a grievance if they wished.

Conductor Popp was in fact required to see to the timely departure of Train No. 27, and his reporting of deficiencies in the caboose supplies did not relieve him of this obligation. When asked whether he refused to take out the train because there was no earthenware teapot supplied, he answered “yes”, although he qualified this later by saying that if he had been ordered to depart “without equipment”, he would have done so. No doubt it would have been the wisest course for the supervisor to order Conductor Popp to proceed on time, notwithstanding the absence of the earthenware teapot. In the circumstances of this case, however, it does not appear to me that any such explicit order was necessary. Conductor Popp was well aware of the train’s schedule, and that the timely movement of freight was the essence of the Company’s – and his – business. The provision of the wrong type of teapot in the caboose hardly constituted such a radical change of circumstances as to raise a question whether the train should proceed. In any event, this is not a case in which the conductor was really uncertain as to whether the train should proceed or in which he needed any clarification of his duties. Conductor Popp delayed the train for an hour and five minutes over an earthenware teapot. This was quite unjustifiable, and he was properly disciplined for it.

For the foregoing reasons, the grievance is dismissed.

**(signed) J. F. W. WEATHERILL**  
**ARBITRATOR**