

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 443

Heard at Montreal, Tuesday, May 14, 1974

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT  
HANDLERS, EXPRESS AND STATION EMPLOYEES

### DISPUTE:

Concerning discipline assessed Mr. J. Bonomo, for 1.) Indicating untruthful emergency situation to be absent from duty and giving and signing false statements in connection with failure to complete assigned tour of duty at Lambton Freight Shed on June 14, 1973; 2.) Smoking in a "No Smoking" area, Lambton Freight Shed, July 30, 1973; and 3.) Deliberately reporting late for duty, Lambton Freight Shed, July 31, 1973.

### JOINT STATEMENT OF ISSUE:

Mr. Bonomo was assessed 45 demerit marks for the first offence, and 10 demerit marks for the second offence and 10 demerit marks for the third offence. Prior to being assessed these demerit marks, Mr. Bonomo had 10 demerit marks against his record. As a consequence, Mr. Bonomo was informed on August 13, 1973 that he had been dismissed for accumulation of 60 demerit marks.

The Union contends that in none of the three cases cited in the Dispute was discipline warranted and that Mr. Bonomo should be returned to service and reimbursed for lost wages.

The Company contends that the discipline assessed was warranted.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) W. T. SWAIN (SGD.) L. A. HILL

GENERAL CHAIRMAN GENERAL MANAGER, Operation & Maintenance

There appeared on behalf of the Company:

H. E. Lyttle – Supervisor, Labour Relations, Toronto

D. Cardi – Labour Relations Officer, Montreal

B. P. Scott – Assistant Supervisor, Labour Relations, Toronto

G. W. Moulton – Terminal Manager, Lambton, Toronto

H. March – Shed Supervisor, Lambton, Toronto

D. W. Cooper – Investigator, Toronto

And on behalf of the Brotherhood:

W. T. Swain – General Chairman, Montreal

## AWARD OF THE ARBITRATOR

The grievor was discharged upon the accumulation (according to the Company's statement) of some seventy-five demerit marks. Under the system of discipline involved, the grievor would be subject to discharge upon the accumulation of sixty demerits. Of the grievor's total of demerit marks, sixty-five are in question here. Forty-five were assessed in respect of an incident which occurred on June 14, 1973. Ten were assessed in respect of an incident which occurred on July 30, 1973 and ten more for an incident on July 31.

The forty-five demerits assessed on June 14 were for untruthfully indicating an emergency situation to exist in order to justify absence from duty. The grievor's hours of duty are from 0800 to 1700, with one hour for lunch. On the day in question the grievor did not return to work following his lunch break, but telephoned to the timekeeping office to say that he had received information that his mother-in-law, who was in the hospital, was very ill and that he should go to the hospital. This information, if true, might excuse the grievor's absence from work. The Company's investigation of that matter (which was justified by the facts to be set out shortly) revealed that the grievor's mother-in-law suffered from multiple sclerosis and had been admitted to hospital in July of 1971. During the month preceding the incident in question her condition had improved and she was released from hospital on June 16, 1973. There is nothing to support the grievor's contention that any emergency had arisen on June 14, and nothing apart from the grievor's own statement to establish that he in fact went to the hospital that day. His statement that he was at the hospital from 1330 on June 14 until 0100 the next morning is not likely to be true in light of the foregoing, and is contradicted by other evidence which I shall now describe.

Following the lunch break on the day in question, the grievor's supervisor received information that he had been seen at the race track in the company of another employee. The Freight Shed Supervisor and an investigator went to the track where the grievor was seen and identified by both men. Both men knew the grievor and both gave evidence at the hearing, positively identifying the grievor as having been at the track at the time when he said he was at the hospital. I accept this evidence, and as a result find as a fact that the grievor gave an untrue explanation of his absence from work on June 14. Clearly he was subject to discipline for this offence, and it is my view in the circumstances that the penalty imposed was not excessive. The other employee had been injured at work that morning, and if no discipline was imposed on him, I can see nothing in the circumstances to suggest unfair discrimination against the grievor.

Ten demerits were imposed on the grievor for smoking on a no-smoking area on July 30, 1973. Here, there is a conflict between the statement of the grievor that he was not smoking, and that of the Dock Manager, who made a prompt report. The statement of a fellow employee that he did not see the grievor smoking in general is its nature and not really corroborative of the grievor's statement. In the ordinary course, a conflict of this nature could only be resolved by *viva voce* evidence. The Dock Manager had left the employ of the Company and was not available to testify. More importantly, the evidence on the preceding incident raises grave doubts, to say the least, of the reliability of statements made by the grievor. In the circumstances, and having regard to all of the material before me, I find that the grievor was smoking in a non-smoking area as alleged, and that discipline was properly imposed.

Ten further demerit points were imposed on the grievor for deliberately reporting late for duty on July 31, 1973. At that time the grievor must have been aware that any misconduct on his part would jeopardize his employment. His hours of work that day were from 0830 to 1700. He was seen to arrive at the freight shed shortly before 0830. The evidence on this point is positive and I accept it. Rather than proceed to work at 0830 as he should have, the grievor preferred to get into a coffee line-up outside the shed and to have a coffee before punching in at 0835. Whatever might be said as to lateness in some other circumstances, the grievor's conduct in this particular case was clearly of a sort to provoke justifiable discipline. Here again, he was properly assessed demerit points.

The total points properly assessed against the grievor exceeded sixty, and he was therefore subject to discharge. In my view, just cause for discharge existed in this case, and the grievance is therefore dismissed.

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

**ARBITRATOR**