

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 773

Heard at Montreal, Wednesday, September 10, 1980

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Discipline assessed Mr. M. Bedard for being in the cafeteria during his working hours on October 19, 1979.

JOINT STATEMENT OF ISSUE:

Mr. Bedard was debited with 20 demerit marks for sitting at a table and eating in the cafeteria during working hours without permission on October 19, 1979.

The Union contended that the charge did not warrant the issuing of demerit marks and requested that the 20 demerits be removed from his record.

The Company denied the Union request:

FOR THE EMPLOYEE:

(SGD.) W. T. SWAIN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. B. CHABOT
GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

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| J. R. Cuin | – Supervisor, Labour Relations, Montreal |
| S. J. Samosinski | – Labour Relations Officer, Montreal |
| M. Lepore | – General Shed Foreman, Outremont Freight Terminal, Montreal |

And on behalf of the Brotherhood:

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| W. T. Swain | – General Chairman, Montreal |
| D. Herbatuk | – Vice-General Chairman, Montreal |
| P. Vermette | – Local Chairman, Montreal |

AWARD OF THE ARBITRATOR

The grievor's regular working hours are from 0600 to 1500. On October 19, 1979, at about 0810, the grievor asked his foreman, Mr. Quimper, for permission to go to the cafeteria for coffee. This permission was granted although there is a general rule prohibiting employees from using the cafeteria during their shifts. The rule was, it seems, loosely enforced, and in any event the grievor was given permission to go.

When the grievor had not returned to work by 0825, Mr. Quimper went to the cafeteria to look for him, and found him seated at a table eating toast and drinking coffee. The grievor, in his statement, suggests Mr. Quimper came looking for him sooner than that, but the fact is that the grievor was sitting down, when it had been expected he would simply return to the work area with his coffee.

Mr. Quimper stated that when he told the grievor to return to work, the latter said, "Don't bother me". The grievor denies this, and maintains that he said he would finish his toast and coffee and come up immediately. He continued to eat his toast and drink his coffee, and did not return to his work.

Mr. Quimper then went and advised Mr. Thibault, the Co-Ordinator. Although the grievor does not recall when Mr. Thibault came, Mr. Thibault states that he was told of the matter by Mr. Quimper at about 0840. It is clear that the grievor remained in the cafeteria for a considerable time even after Mr. Quimper had come looking for him.

Clearly, even if those statements by Quimper and Thibault which the grievor questions are rejected, it remains that the grievor did dawdle in the cafeteria for a much longer time than would be reasonable. He overstayed his permission, even after a request to return, and was subject to discipline on that account.

As to the severity of the penalty imposed, I would think that 20 demerits would be excessive in the case of a first offence. The grievor had, however, been warned with respect to the use of the cafeteria on three separate occasions in the recent past. The theory that demerit points double on each repetition of an offence is not necessarily one of general application and it would not necessarily be the case that for a further offence of this type, forty demerits could be assessed. In the circumstances, I do not consider that 20 demerits went beyond the range of reasonable disciplinary responses to the situation.

Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR