

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 899

Heard at Montreal, Tuesday, January 12th, 1982

Concerning

CANADIAN PACIFIC LIMITED

and

RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Dispute between CP Limited (CP Rail Eastern Region) and the Rail Canada Traffic Controllers with respect to the dismissal of Mr. G. A. Beaulieu of Britt, Ontario.

JOINT STATEMENT OF ISSUE:

Mr. Beaulieu was dismissed May 22, 1980, for "fraudulently submitting claims and accepting monies you were not entitled to, for cleaning of Britt Station, mileage 65.0, Parry Sound Subdivision".

It is the Union's position that Mr. Beaulieu's actions were not fraudulent and are explicable and, therefore, his dismissal was unwarranted.

The Company contends that there was just cause for dismissal.

Pursuant to the provisions contained in the Agreement attached as Appendix A hereto, the sole issue to be decided at arbitration is the issue of Mr. Beaulieu's reinstatement without compensation.

FOR THE EMPLOYEE:

(SGD.) G. C. ELLISON
SYSTEM VICE-CHAIRMAN

FOR THE COMPANY:

(SGD.) J. P. KELSALL
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

L. A. Clarke – Supervisor, Labour Relations, Toronto
P. A. Pender – Assistant Superintendent, Chapleau
R. A. Colquhoun – Labour Relations Officer, Montreal
I. J. Waddell – Labour Relations Officer, Montreal

And on behalf of the Employee:

D. H. Arnold – General Chairman, Winnipeg
G. A. Beaulieu – Grievor

AWARD OF THE ARBITRATOR

Appendix A to the Joint Statement of Issue is an agreement made by the grievor and all parties concerned, by which the grievor withdrew a complaint of unfair labour practice and agreed (along with the union), that the sole issue in arbitration (to which process all parties agreed), would be that of reinstatement without compensation.

The grievor, an employee of some twenty-five years' service, was employed as First Operator at Britt, Ontario, and had been since 1970. In 1971, the grievor entered into an agreement with the Company to clean the Operator's office and the waiting room at Britt Station, for a payment of \$10.00 per month. A claim for this amount, for which the grievor prepared a receipt, was entered by the grievor in the station time-worked report. The grievor forwarded the report and receipt to the Eastern Region Data Centre in Toronto, for processing in the payroll system.

In 1976, the waiting room at Britt Station was divided in two. One area remained a passenger waiting room, and the other, where washroom facilities were also installed became a lunchroom for the section forces. It seems that the grievor continued to clean the operator's room, but only did occasional cleaning in the other areas after these changes were made. He continued to submit claims for and be paid the \$10.00 per month.

In 1979 a new arrangement was made (whose terms, this time, were set out in writing), by which the grievor was to clean "the operator's room, the waiting room, the sectionmen's lunch room, toilet and washroom" for a payment of \$40.00 per month. The grievor began the work, and enquired as to the billing practice. In a memo to the Assistant Superintendent, he stated he had begun the work above described and continued: "Please advise where I send bill for same. Do I send it to Sudbury or claim from Data Centre as before". The grievor was advised to submit the bill to the Superintendent's office in Sudbury. He did so, and thereafter was paid \$40.00 per month for the work.

The cleaning work involved under the arrangement made in 1979 is in respect of the same area as that involved in the 1971 arrangement. Some of that area has been subdivided and new installations made, as has been noted. The same square footage is involved, however. The grievor, while submitting a bill for \$40.00 to Sudbury, continued to submit a bill for \$10.00 per month to Toronto. Thus, the grievor made two claims, and for some time was paid twice, for the same work.

The grievor's explanation for this was that "There was no mention of cancelling the previous \$10.00 per month agreement for cleaning the office and the waiting room, so I figured there was two agreements". It is clear, however, that the written agreement made in 1979 covers all of the areas cleaned. The grievor's position is that the new agreement simply pertained to the cleaning of the sectionmen's quarters. He stated, at the investigation, that "I guess I misread the letter and did not notice the inclusion of the Operator's Room and the Waiting Room in the agreement". The letter setting out the agreement is simple and straightforward and sets out quite clearly what work is to be done and what is to be paid for it. It is, in my view, quite clear that there was one payment to be made for the work covered by that agreement. There was no justification for claiming that part of the very work was covered by another agreement. The grievor, as I find, improperly took advantage of the situation and claimed twice for the same work. He claimed and accepted such payments over a considerable period of time.

Whether it be described as "fraudulent" or not, submission of two claims for the same work was quite improper. There was no real ambiguity in this situation, and I cannot believe that the grievor really thought that he was in fact entitled to both payments. In my view, it has been clearly established that he submitted a false claim.

The ground of discipline is therefore made out. The offence is a most serious one, and was continued over a long period, until discovered. The appropriate penalty in such a case is discharge, and I am not satisfied that this is a proper case in which to substantiate any other. Accordingly the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR