

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 901

Heard at Montreal Tuesday, January 12th, 1982

Concerning

### CANADIAN PACIFIC LIMITED

and

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

#### DISPUTE:

Mr. G. Craib was assessed a total of eighty (80) demerit marks on October 20th, 1980, which lead to his dismissal.

#### JOINT STATEMENT OF ISSUE:

On October 20th, 1980, Mr. G. Craib was assessed the following demerit marks:

- 1) Twenty (20) demerit marks for "disobeying an instruction and leaving the Company property without permission, Thunder Bay, October 4, 1980."
- 2) Ten (10) demerit marks for "failure to comply with Supervisor's instructions, Thunder Bay, October 4, 1980."
- 3) Thirty (30) demerit marks for "use of obscene language directed at a Supervisor within the hearing of a fellow employee; insubordination Thunder Bay, October 4, 1980."
- 4) Twenty (20) demerit marks for "failure to attend a scheduled investigation or provide a satisfactory explanation for such failure, Thunder Bay, October 7, 1980."
- 5) "Dismissed for accumulation of demerits."

The Union's contention is that the penalty assessed Mr. G. Craib is much too severe and requested that Mr. Craib be reinstated and his demerit marks be reduced to thirty (30) from eighty (80) and compensated for wages lost.

The Company have declined the request.

#### **FOR THE EMPLOYEES:**

**(SGD.) PAUL ROUILLARD**  
FOR SYSTEM GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) R. J. SHEPP**  
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

J. A. Sampson – Supervisor, Labour Relations, Winnipeg  
D. Cardi – Labour Relations Officer, Montreal

And on behalf of the Employee:

R. Welch – General Chairman, Vancouver  
W. T. Swain – General Chairman, Montreal

## AWARD OF THE ARBITRATOR

The grievor was hired by the Company in August, 1974. At the time of his discharge he was working as a Perishable Inspector.

The first of the matters in issue arose in the afternoon of Saturday, October 4, 1980, when the grievor did not return to his desk after being directed to do so by his Supervisor. The Supervisor, it would seem, was annoyed with the grievor for having interrupted his conversation with another employee, to advise the other employee that there was a telephone call for him. It also appears, from the material before me, that the grievor became annoyed at the Supervisor's annoyance and followed the two men to another office, where he repeated his message, such as it was. The Supervisor told the grievor to return to his desk. It was only "eventually" that he did so.

Of course the grievor ought to have returned to his desk, but I do not consider that it is a matter of great importance that he did not do so with the desired promptness. Failure to conform "on the double" should not lead to any substantial discipline. While the grievor (whatever might be the case with the Supervisor), might be criticized for petulance, this was not a matter over which more than five demerits (if any) could properly be assessed.

The second and third matters are, I think, really one incident. It may be borne in mind that they occurred on the same day as the first. The grievor left the premises, briefly, to buy his lunch, as it had been his habit to do. That very day, he had been told, apparently for the first time (although the matter of taking too long for lunch had been raised before), that he was not to leave the premises for lunch without permission. It would seem that the grievor had not brought lunch with him.

The Company's position with respect to the lunch period seems reasonable, it being a matter of a twenty-minute paid lunch, for employees engaged in continuous operations. There had been complaints as to lack of service, and the Company was entitled to tighten-up its rules. The grievor was wrong to leave without permission although since the enforcement of the rule was new, the response to a first offence, in all of the circumstances, need not have been drastic.

Having been called back to work, the grievor was annoyed, as he felt he was within his rights. When advised that he was then being sent home, he became more annoyed, and did indeed address foul and abusive language toward the Supervisor, in the presence of other employees. While it may be that the grievor's annoyance was to a degree understandable (although he was himself in the wrong), there was no excuse for that sort of reaction, and of course the grievor would be subject to discipline for it. In my view, however, the improper reaction to criticism is really to be considered – for the purposes of discipline – as forming part of the whole incident out of which the criticism arose. The grievor's conduct was wrong, and, taken as a whole, merited severe discipline, but the assessment of a total of fifty demerits was, in the circumstances, excessive. In my view, thirty demerits would be the most that would properly be assessed in respect of the whole matter.

The final matter involves the grievor's failure to attend at the investigation scheduled in respect of the above matters. The grievor simply refused the first notice, saying it "conflicted with his schedule" and apparently ignored a second notice. He did not attend the scheduled hearing, and has never given any explanation at all. In the circumstances of this case at least, I think that this was improper conduct for which discipline could be imposed. In my view, however, the assessment of twenty demerits was excessive. A penalty of ten demerits would, I think have been appropriate.

For all of the foregoing reasons, it is my conclusion that there was not just cause for the discharge of the grievor. It is my award that the total demerits assessed against his record be reduced to forty-five, and that the grievor be reinstated in employment forthwith, without loss of seniority or other benefits. He shall be entitled to compensation for loss of earnings for the period from and after October 20, 1980, and his disciplinary record shall be effective as of the date of his actual reinstatement.

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