

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 909

Heard at Montreal, Tuesday, February 9, 1982

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Reinstatement with full compensation of Mr. L. Miles, dismissed from service on October 9, 1980. Removal of 25 demerits assessed Mr. L. Miles on October 9, 1980.

JOINT STATEMENT OF ISSUE:

Mr. L. Miles was dismissed on October 9, 1980, for unbecoming behaviour in a boarding car at Hull during the evening of September 18 and morning of September 19, 1980, detrimental to the Company's interest.

Mr. L. Miles' record was debited with 25 demerit marks on October 9, 1980, for his failure to report to a scheduled investigation on September 26, 1980, at Park Avenue at 1000 hours.

The Union contends that the Company had no grounds upon which to dismiss Mr. Miles for unbecoming behaviour on September 18 and 19, 1980. The Union further contends that the 25 demerit marks assessed to Mr. Miles on October 9 for not appearing at a scheduled hearing on September 26, 1980, was not justified.

The Company contends that Mr. Miles' dismissal and the demerits debited against his record were both for just cause.

The Company has declined the Union's request to reinstate Mr. Miles and to remove the demerits from his record.

FOR THE EMPLOYEE:

(SGD.) H. J. THIESSEN
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

I. J. Waddell – Labour Relations Officer, Montreal
B. A. Demers – Supervisor Labour Relations, Montreal
H. Fuks – Divisional Engineer, Sherbrooke

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa
L. DiMassimo – General Chairman, Montreal

AWARD OF THE ARBITRATOR

There is no doubt that on the evening of September 18 and the morning of September 19, 1980, the grievor's behaviour was indeed "unbecoming" and "detrimental to the Company's interest".

At the material times the grievor was working as a Machine Operator I, surfacing track on the Waltham Subdivision, in the vicinity of Hull. On September 18, at 1600, he brought his machine to the Hull Yard for servicing, which was to be completed at 1900. The grievor was accommodated in a Company boarding car which he shared with another employee, a member of the same work gang. The grievor's hours were 0700 to 1700, and he was to report to duty on September 19, at 0700.

On the evening of September 18, at about 2000, the grievor was observed by a fellow employee to prepare, and then to smoke a cigarette which was not a normal one. It was admittedly a "joint" and while the grievor says he "found" it in the boarding car, the only serious conclusion is that he found it among his own effects. The grievor, I find, brought narcotics onto Company premises and used narcotics on Company premises. This was an offence, although it was not as serious an offence as if it had occurred while the grievor was on duty. In **Case No. 817** while the discharge of an employee who smoked a slight amount of marijuana while on duty was set aside, a very lengthy suspension was substituted. In the instant case a lesser penalty would be appropriate.

Subsequently, the grievor left the boarding car and went for a walk. He had a beer in a bar – there was certainly nothing wrong in that and then went to a disco bar where he had "a few drinks". Up to a point, there would be nothing wrong with that either, but it would appear that the grievor went too far, for as events proved, he rendered himself incapable of reporting for work – and he held one of the key jobs in the gang – the next morning. Rendering himself unavailable for service was wrong, and would subject the employee to discipline.

At the bar, the grievor met a woman, and in his intoxicated condition returned with her to the boarding car. It is important to note that he did not have an individual room, but shared the car with a fellow employee. He took the woman to bed, where the couple were found by the other employee – who seems not to have appreciated this violation of his privacy – in the morning, when it was time to get up and go to work.

While the Company is not the custodian of the morals of its employees, and while it has only a strictly limited interest in their off-duty behaviour, it is quite properly concerned to control what happen on its own premises, matters which may affect the proper operation of its business, the safety of its employees and of the public, and the proper interests of other employees. It was wrong for the grievor to bring the woman onto Company premises, into a railway yard. It was wrong as well for him to bring her, without permission, into the boarding car which was shared with the other employee. While it may be that employees' wives or girl friends have accompanied them in boarding cars, nothing shows that the circumstances there were of the same nature as those in this case, or that such visits were unauthorized. Again, the grievor was properly subject to discipline in this case.

The grievor was awakened by the Roadmaster at 0930. The grievor asked for, and was of course accorded, time to get up and get dressed. The Roadmaster told him to report to his office, and left a note advising that he was being held out of service. It was then necessary for him to pack his belongings. Late as he was, the grievor would be subject to some discipline on that account.

The grievor packed his bags, the woman remaining with him as he did so. In the course of this, the grievor slammed a door of the boarding car, shattering the glass of the window. While this might be attributable to bad temper on the grievor's part, I do not regard it as a deliberate act of vandalism, and would not consider that any discipline should be assessed on that account. Subsequently, the grievor and the woman were escorted off the premises. All of the foregoing constitutes "unbecoming behaviour" and would subject the grievor to severe discipline. Rather than consider each of the incidents of improper conduct separately, it would, I think, be proper to regard the whole matter as a night out in which there were many diversions, which one may regard as more or less disgraceful. They did have a direct effect on the Company and on a fellow employee, and the Company was certainly entitled to impose discipline. It would be my view, having in mind that the grievor, while of short seniority, was a good employee with a clear record, that dismissal was too severe a penalty for that day's misconduct. A substantial penalty could, of course, be imposed, and it would be my view (according minimum demerits for the various incidents and rounding the total down since it was really all one set of events) that the assessment of 50 demerits would have been justified. Following these events, an investigation was scheduled at a time convenient to the grievor. The matter involved some inconvenience to the Company and the grievor gave assurances that he would be

there. He was not, and advised the Company thereof only at the last minute. His explanation for this is, in my view, quite unsatisfactory, revealing that he had not made adequate preparations to attend, and then had made quite inadequate efforts to advise the Company to that effect. Later, he was one and one-half hours late for the investigation which was ultimately held. For these failings too the grievor was subject to discipline. Whether or not 25 demerits may have been excessive, I have no doubt that at least 10 demerits would have been justified, having regard to all of the circumstances.

In the result, then, the grievor must be taken to have accumulated at least 60 demerits in any event. He was, therefore, subject to discharge, and the grievance must accordingly be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR