

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 958

Heard at Montreal, Tuesday, June 8, 1982

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. J.C. Blahey was assessed 20 demerits for an insubordinate act on August 24, 1981, and 10 demerits for failure to appear for an investigation on August 25, 1981.

JOINT STATEMENT OF ISSUE:

The Union contends that J.C. Blahey was not insubordinate on August 24, 1981.

The Union further contends there was no failure by J.C. Blahey to appear for investigation on August 25, 1981. The Union further contends that the 20 demerits for an insubordinate act and 10 demerits for failure to appear for an investigation, both be removed.

The Company declines the contention.

FOR THE UNION:

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

FOR THE COMPANY:

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

There appeared on behalf of the Company:

R. A. Colquhoun – Labour Relations Officer, Montreal
F. B. Reynolds – Supervisor, Labour Relations, Winnipeg
R. D. Falzarano – Assistant Supervisor, Labour Relations, Winnipeg

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa
F. L. Stoppler – Vice-President, Ottawa
R. Wrostok – Federation General Chairman, Edmonton
E. J. Smith – General Chairman, London
R. Lunn – General Chairman, Vancouver

AWARD OF THE ARBITRATOR

As to the assessment of ten demerits for failure to appear at an investigation, it is my view that the grievance must be allowed. While I do not think the Collective Agreement necessarily requires that notice of investigation be in writing, and while the grievor did have actual notice that a hearing would be held, there was some doubt (although not much) as to the time of the hearing and, more importantly, the grievor was at work at a location to which he had been transported by the Company at the time of the hearing. If the Investigator Officers were in fact waiting at the timekeeper's shed for the investigation to be held they were under some obligation, in my view, to remind the grievor of the time, and indeed to make arrangements for his attendance. These were not circumstances in which discipline was justified.

There was, subsequently, an investigation held. Although some of the questions may have been of doubtful relevance to the subject of the investigation, the investigation in general was proper. There is no doubt that the grievor did not follow proper instructions, clearly given. He did not advance any justification for that at the time and indeed at his investigation simply stated that he "didn't feel like it", when asked why he did not follow instructions.

The grievor's conduct was obviously wrong, and he was subject to discipline. In the circumstances, I do not consider that the assessment of twenty demerits was excessive.

The grievance is therefore allowed in part. The ten demerits are to be removed from the grievor's record; the twenty demerits are to remain.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR