

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1011

Heard at Montreal, Wednesday, November 10th, 1982

Concerning

### CANADIAN PACIFIC LIMITED

and

### BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

#### **DISPUTE:**

Discipline of 20 demerit marks to John M. Dirk, Maintainer 1, Ogden Maintenance of Way Shop, for refusing to perform work assignment as instructed by Shop Supervisor at Calgary, Alberta, March 11, 15 and 18, 1982.

#### **JOINT STATEMENT OF ISSUE:**

The Union contends that J. M. Dirk did not refuse his normal work as Maintainer 1.

The Union further contends that J. M. Dirk should be compensated for wages lost between March 18, 1982, to March 23, 1982, both dates inclusive including overtime and the 20 demerits removed.

The Company declines payment of claim and denies the Union's contention.

#### **FOR THE BROTHERHOOD:**

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

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

**(SGD.) L. A. HILL**  
GENERAL MANAGER, OPERATION AND MAINTENANCE.

There appeared on behalf of the Company:

L. J. Masur – Supervisor, Labour Relations, Vancouver  
R. A. Colquhoun – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa  
R. Wyrostok – Federation General Chairman, Edmonton  
E. J. Smith – General Chairman, London  
L. DiMassimo – General Chairman, Montreal  
F. L. Stoppler – Vice-President, Ottawa

## **AWARD OF THE ARBITRATOR**

The grievor was disciplined for refusing to perform his work assignment as instructed on three separate occasions. There is no doubt that instructions were given, and that the grievor refused to follow them.

The grievor is a Maintainer 1 at the Ogden Equipment Repair Shop. This involves work on various sorts of machinery and includes, in particular, the overhaul of tamper work heads, as required. At the time in question, the grievor was the only Maintainer at the Ogden Shops who was familiar with that particular job. The Company decided to familiarize two other Maintainers with it, and in aid of this instructed the grievor to teach the other two employees how to do that work. On each of the three occasions referred to, the grievor refused such instructions.

The instructions were given clearly, and the grievor understood them. It was made clear to him that he would face discipline if he persisted in his refusal. Only after the grievor had refused, on a third day, the clear instruction, was discipline actually imposed.

The instruction was, in my view, a proper one. Even if it were not, the circumstances were such that the grievor's duty was to obey the instruction, and to grieve if he felt he had been wrongly dealt with. The grievor refused the instruction "because I am a Group 1 Maintainer and not an Instructor". That was not a valid reason for refusing the instruction. To teach other Maintainers a particular aspect of the Maintainer's job is itself a proper task of that classification, and indeed the grievor acknowledges that he has taught other employees such procedures in the past. To instruct or assist others in the work of one's classification is, in general, a proper aspect of the work of the classification itself. In refusing to do that, the grievor refused to perform a part of the work of his own classification.

Quite apart from that, however, even if it be thought that in showing other employees how to do the overhaul in question the grievor would be acting as an "Instructor", the only consequence of that would be that the grievor would be entitled to an "Instructor's" rate (if any) in respect of that work. He would not be entitled to refuse the assignment on that account. It should be stressed, however, that I do not consider the grievor was being asked to act as an "Instructor" in the sense of doing the work of some other classification. He was being asked to teach others in his own classification how to perform a particular task coming within the scope of that classification. He was to show them how to do it. He was not asked to prepare and conduct classes, or to bear any significant degree of pedagogical responsibility.

The assignment given the grievor was a proper and, one would have thought, an unremarkable one. It appears to have been suggested by the Company that the grievor was under some obligation pursuant to Article 27.11 of the Collective Agreement, but it has since been acknowledged that that provision has no bearing on the matter. The irrelevance of that Article, however, does not affect the general obligation of the grievor to carry out the tasks of his classification, including ancillary tasks of occasional instruction of others in its work and, more generally, of obeying those instructions which are not illegal or unsafe. In the instant case, the grievor ought to have followed the direction given him.

The grievor is a long-service employee with a good record. However, since his refusal was a persistent and repeated one, a significant penalty is appropriate, and in my view the assessment of 20 demerits did not go beyond the range of reasonable disciplinary responses to the situation. Accordingly, the grievance is dismissed.

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