

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1036

Heard at Montreal, Tuesday, February 8th, 1983

Concerning

### CANADIAN PACIFIC LIMITED

and

### BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

#### DISPUTE:

On October 19, 1981, Extra Gang Foreman D. G. Johnston was involved in an accident resulting in destruction of the Company vehicle near Kamloops, B.C. D. G. Johnston was demoted for two years to Extra Gang Labourer for violation of Rule G, which the Union appealed.

#### JOINT STATEMENT OF ISSUE:

The Union contends the discipline was not warranted account: **1.)** There was no violation of Rule G. **2.)** The discipline be therefore removed and D. G. Johnston be restored to his Extra Gang Foreman position. **3.)** That D. G. Johnston be paid the difference in wages between that of Extra Gang Foreman and Extra Gang Labourer from date he was demoted.

The Company declines the Union contention and payment of claim.

#### **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:

F. R. Shreenan – Assistant Supervisor, Labour Relations, Vancouver  
B. P. Scott – Labour Relations Officer, Montreal  
D. J. David – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa  
L. DiMassimo – Federation General Chairman, Secretary-Treasurer, Montreal  
G. Valence – General Chairman, Sherbrooke  
F. L. Stoppler – Vice-President, Ottawa

## **AWARD OF THE ARBITRATOR**

The grievor, an Extra Gang Foreman, was driving a 3/4 ton pickup truck from Calgary to Coquitlam when he was involved in an accident. The accident occurred at about 2330 hours on Monday, October 19, 1981. Conditions were clear and the road was straight. There was construction on the highway, and a detour had to be made around a pile of gravel and certain work being carried out in the westbound lane. Traffic was therefore controlled so that it proceeded in one lane at a time. The grievor approached the detour at a time when it was open to westbound traffic. He was, according to his statement, travelling at 60 m.p.h.. There were a number of signs placed ahead of the detour, from a distance of about 150 feet. The grievor considered these signs inadequate, and they may have been so, but the fact is that he did see them, and indeed hit some of them as he proceeded westward.

As he reached the detour the grievor, although he had slowed down slightly, realized that he would be unable to negotiate the detour without striking the stopped eastbound vehicles or hitting certain construction workers. He therefore drove into – and over – the pile of gravel. His vehicle flipped end over end, then rolled over twice before coming to rest in the westbound lane. It was totally destroyed. The grievor, fortunately, was not seriously injured, even although he was not wearing his seat belt.

Prior to the accident, between 2040 and 2100 hours, the grievor had consumed 2-1/2 bottles of beer at a hotel in Revelstoke. Having regard to the way the accident occurred, it is difficult not to believe that this consumption must have had some effect on the grievor. Sometime after the accident, a breathalyzer test was administered to the grievor, producing a reading of 0.15. This would in part be accounted for by the grievor's having consumed – according to his statement – 1/4 bottle of whiskey following the accident. The whiskey had been in his suitcase, which was in another vehicle being driven by a fellow employee.

Relying strictly on the grievor's own statement, there can be no doubt that the grievor had alcohol in his possession, and consumed alcohol, while on duty or while subject to duty. The grievor was on duty at the time – he was driving the vehicle from Calgary to Coquitlam on the Company's instructions – whether or not he put in a time claim in respect of the particular hours in which the accident occurred. He was, while en route, certainly "subject to duty" while he was stopped at the hotel. I have no doubt that a Rule "G" violation occurred, and that the grievor was subject to discipline on that account.

While demotion is not usually appropriate as a form of discipline, the loss of Foreman's responsibilities (for a limited period) is suitable in the instant case, where the grievor committed his offence in the presence of an employee under his supervision. Whether or not, in the circumstances of this particular case, discharge may have been justified is not an issue which need be determined.

The offence was, I find, committed, and in the circumstances the penalty imposed was not beyond the range of reasonable disciplinary responses. Accordingly, the grievance is dismissed.

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