

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1126

Heard in Montreal, Wednesday, July 6, 1983

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The following discipline assessed Mr. B. Doyle in Forms 104 dated October 27, 1982, and forwarded by registered mail on November 10, 1982: (1.) 60 demerit marks for a repeat violation of refusing Supervisor's instructions to proceed to work on October 7, 1982, and; (2.) Dismissal from service for an accumulation of 100 demerit marks.

JOINT STATEMENT OF ISSUE:

The Union contends that: (1.) On October 7, 1982, Mr. B. Doyle did not refuse the Supervisor's instructions. (2.) The 60 demerits be removed from his record and Mr. B. Doyle reinstated with all his seniority. (3.) Mr. B. Doyle be compensated for wages from December 3, 1982, until reinstated to his former position.

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

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

(SGD.) P. A. PENDER
FOR: GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

P. A. Pender – Supervisor Labour Relations, Toronto
R. A. Colquhoun – Labour Relations Officer, Montreal
R. Baxter – Assistant Roadmaster, MacTier
P. Chapell – Special Assistant, Eastern Region, Toronto

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

There is no doubt that the grievor, although clearly instructed to go to work on the morning in question, did not do so. It would appear that his main reason for not doing so was that it was raining, and he did not wish to work in the rain. While that is understandable, the work is outdoor work, and had been performed in rainy weather for some time. In his statement, the grievor indicated that he did not go to work because the labourers on his gang were not going to work. That however did not affect the grievor's obligation to proceed to work as instructed.

There is no doubt that the grievor was subject to discipline in the circumstances. As to the severity of the penalty imposed, the assessment of 30 demerits for refusal to follow instruction has been held in other cases to be appropriate, and it is my view that such a penalty was appropriate here. The grievor himself had been assessed 30 demerits for a similar offence in November, 1981. While I do not consider that under this system of discipline it is necessarily appropriate to double the penalty for an offence when it is repeated, and while I think that the assessment of 60 demerits in this case was excessive, the point is academic, since the assessment of only 30 demerits for the offence in question (and I find there was just cause for the assessment of at least 30 demerits), would result in the grievor's having accumulated more than 60 demerits (his record at the time stood at 40 demerits), so that he was subject to discharge.

For the foregoing reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR