

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1185

Heard at Montreal, Tuesday, February 14, 1984

Concerning

CANADIAN PACIFIC LIMITED

and

Brotherhood of Maintenance of Way Employees

DISPUTE:

Machine Operator E. Senecal submitted his Time Report for the period January 14-27, claiming 12 hours P.O.T. for Sunday, January 16, 1983 a day he did not work. Following an investigation, Machine Operator E. Senecal was dismissed from the service of the Company on March 11, 1983 "... pour avoir falsifié votre rapport de temps supplémentaire (imprime 294) et votre feuille de temps (imprime 47) pour la journée du 16 janvier 1983."

JOINT STATEMENT OF ISSUE:

The Union contends that: (1.) The overtime claim of 12 hours was account a junior Machine Operator was called instead of Mr. E. Senecal. (2.) That he be reinstated with all his seniority rights and be paid his regular rate of pay from date of dismissal.

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

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) H. J. THIESSEN (SGD.) J. L. FORTIN

System Federation General Chairman Acting General Manager, Operation and Maintenance

There appeared on behalf of the Company:

B. A. Demers – Supervisor Labour Relations, Montreal

J. H. Blotsky – Assistant Supervisor, Labour Relations, Montreal

R. A. Colquhoun – 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, Montreal

R. Gaudreau – Vice-President, Ottawa

G. Valence – General Chairman, Sherbrooke

E. Senecal – Grievor

AWARD OF THE ARBITRATOR

The grievor, Machine Operator E. Senecal was terminated for his alleged falsification of his timekeeping report claiming he had worked 12 hours overtime when he clearly had not worked that time.

This grievance arose out of the grievor's complaint that he had been by-passed for an opportunity to work overtime on Sunday, January 16, 1983. When he learned that a less senior employee, Mr. Gendron, had been selected instead of him he approached Track Maintainer Foreman Rossignol for his advice. Mr. Rossignol was the foreman on duty when the calls were made inviting employees to work overtime on January 16, 1983 to clear snow. Mr. Rossignol is a member of the bargaining unit.

At no time did the grievor present a grievance, as contemplated by the collective agreement, claiming breach by the Employer of his overtime privileges.

There is a very serious conflict in the evidence. The Employer stated in its brief that when Mr. Senecal approached Mr. Rossignol the latter advised the grievor to consult with Mr. Lapierre, Assistant Roadmaster or Mr. Charette, Roadmaster, for the purpose presumably of lodging a grievance. It was also suggested that Mr. Rossignol directed the grievor to discuss the matter with his Trade Union representative.

If Mr. Senecal was given such advice it is clear that he did not follow it. Rather he submitted a claim for overtime on the Employees Daily Overtime Report (Form 294) and repeated the claim at a later date on his Timekeeping Report. At no place does it appear on those documents that he is claiming the stated hours as overtime for having been bypassed.

Mr. Senecal stated that when he approached Mr. Rossignol for advice he asked whether he should put in a claim for overtime. Mr. Rossignol is alleged to have said that he would not have a chance of having passed by the Employer, or words to that effect. Mr. Gagné is alleged to have overheard the conversation and he advised him to try anyway. Accordingly, the grievor admits that he filed the required forms pursuant to his overtime claim. The grievor has made such claims for overtime when he has worked the overtime hours in question on approximately twenty occasions in the past.

It appears that in due course the grievor's claim for overtime was intercepted by Mr. Rossignol. The alleged fraud committed by the grievor was exposed thereby culminating in his dismissal.

The arbitral precedents clearly establish that falsifying timekeeping reports with a view to extracting the payment of monies from the Employer is treated as tantamount to theft and will warrant an employee's dismissal. Moreover, it seems irrelevant to the committal of that infraction if the employee was motivated by the Employer's alleged violation of the collective agreement. I can conceive of no mitigating circumstance that would warrant an employee's breach of trust in securing a benefit allegedly wrongly denied him by his Employer. Trite as it might appear such wrongs should be remedied by recourse to the grievance procedure.

The dilemma I am faced with in this case is whether the grievor deliberately intended to falsify his timekeeping records in order to perpetrate a fraud. In this regard Mr. Rossignol played a key, if not essential role, in dealing with the grievor's complaint. Nowhere in the material adduced before me was it substantiated that Mr. Rossignol advised the grievor to seek the counsel of Mr. Lapierre, Mr. Charette or his Trade Union representative for the purpose of disposing of his complaint.

What the grievor did ask Mr. Rossignol is whether he should put in a claim for overtime. Mr. Rossignol may very well have assumed that the grievor meant to ask whether he should lodge a grievance. Mr. Senecal's question may have inspired the response that was ascribed to him by the Employer in its brief. Mr. Rossignol's interview report however does not disclose this advice to have been communicated.

On the other hand, Mr. Senecal stated before me that Mr. Rossignol did not give him any encouragement in his making a claim. His colleague, Mr. Gagné, told him to try anyway. It is clear that Mr. Senecal perceived, whatever his intentions, that any claim he would enter should be made on his timekeeping forms. It is ironical that the very person from whom Mr. Senecal sought advice was responsible for apprehending him during the course of the grievor's alleged fraud. Was this coincidence brought to Mr. Rossignol's attention during the course of the investigation? Was he asked what advice he in fact gave the grievor? If the grievor expressed the intention to Mr. Rossignol of making a claim for overtime did he really mean by way of a grievance? Would the grievor purposely make a fraudulent claim for overtime and discuss it with his supervisor beforehand?

I honestly do not know whether the grievor, on the material before me, intended to defraud the Employer or was simply so ignorant that he did not know that the grievance procedure was the appropriate avenue to follow. I do agree with the Trade Union to this extent. If the grievor intended to defraud the Employer, he certainly exhibited a most stupid way of going about achieving that end. Surely, you do not discuss the making of a false claim with your immediate supervisor if skullduggery is your ultimate objective. In brief, I am not satisfied that the grievor intended to defraud the Employer.

Because of the grievor's failure to launch an appropriate grievance (for which I hold his Trade Union representative in large part responsible) I propose to direct the grievor's reinstatement forthwith and to treat the period between his alleged discharge and his reinstatement as an unpaid leave of absence. The grievor is to retain his seniority and other benefits during that period. I shall remain seized in the event of difficulty in the implementation of this award.

(signed) DAVID H. KATES

ARBITRATOR