

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1212

Heard at Montreal, Wednesday, March 7, 1984

Concerning

### CANADIAN PACIFIC LIMITED

and

### BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

#### DISPUTE:

On June 6, 1983, Track Maintenance Foreman Mr. J. Korchinski was assessed 10 demerits for conduct unbecoming an employee relating to an incident on May 17, 1983.

#### JOINT STATEMENT OF ISSUE:

The Union contends the discipline is not warranted and requests that the 10 demerits be removed from the record of Mr. J. Korchinski.

The Company declines 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:

F. R. Shreenan – Supervisor Labour Relations, Vancouver  
D. N. McFarlane – Assistant Supervisor Labour Relations, Vancouver  
R. A. Colquhoun – Labour Relations Officer, Montreal  
M. K. Couse – Observer, 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

## **AWARD OF THE ARBITRATOR**

On May 17, 1983, Track Maintenance Foreman J. Korchinski became involved in an altercation with an employee, Leading Track Maintainer F. Gerard, who worked under his supervision. Apparently Mr. Korchinski made an effort to restrain Mr. Gerard from criticizing and harassing another employee, Track Maintenance Foreman P. Dippalito. Mr. Gerard responded by calling Mr. Korchinski a "bohunk". The grievor lost his temper and directed an obscenity towards Mr. Gerard. The latter then made an overture towards the grievor with a view to engaging him in a physical altercation. At that point both parties were restrained. Both Mr. Korchinski and Mr. Gerard were assessed ten demerit marks for their participation in the episode.

The Trade Union asserts that the entire incident was initiated by Mr. Gerard and therefore the grievor should not be made to suffer the same disciplinary consequence. The Company insists that the grievor, having regard to his supervisory position, mishandled the situation and engaged in conduct unbecoming a foreman. His duty was to prevent the incident from deteriorating.

Although I may very well agree with the Trade Union's assertion that Mr. Gerard provoked the altercation by his peculiar behaviour, the grievor did not alleviate the situation by directing obscenities toward Mr. Gerard. The grievor lost his temper and thereby lost control of the situation. He thereby permitted the incident to escalate into what nearly became a physical confrontation. As the employer submitted, the grievor's duty as a supervisor was to defuse the situation. Instead he contributed to its deterioration.

For the foregoing reasons I agree with the Company's argument that the grievor engaged in conduct unbecoming a foreman and was appropriately disciplined by the imposition of ten demerit marks.

**(signed) DAVID H. KATES**  
**ARBITRATOR**