

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1228

Heard at Montreal, Wednesday, April 11, 1984

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

The dismissal of Mr. G. W. Craib, Thunder Bay, Ontario, on August 26th, 1983.

JOINT STATEMENT OF ISSUE:

On August 26th, 1983 Mr. G. W. Craib was assessed twenty (20) demerit marks for leaving the place of work without proper authority on August 13th, 1983, Thunder Bay, Ontario and on the same date, August 26th, 1983, his services were terminated for accumulation of demerit marks.

The Union claimed the dismissal is much too severe and not warranted and requested that Mr. G. W. Craib be reinstated with full seniority and compensated for all loss of wages and benefits he may have lost.

The Company declined the request.

FOR THE BROTHERHOOD:

(SGD.) M. J. KRYSIOFIK
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) F. B. REYNOLDS
FOR: GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

F. B. Reynolds	– Supervisor, Labour Relations, Winnipeg
D. A. Lypka	– Assistant Supervisor, Labour Relations, Winnipeg
H. D. Walkoski	– Rail Terminal Supervisor, Kenora
F. E. Lazinski	– Supervisor, C.S.C., Thunder Bay
P. E. Timpson	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

M. J. Krystofiak	– General Chairman, Calgary
P. Rouillard	– General Secretary-Treasurer, Vancouver
G. W. Craib	– Grievor
H. LeBel	– (Counsel) Observer

AWARD OF THE ARBITRATOR

The grievor's Solicitor was allowed to attend the hearing as an observer. At all times the grievor's interests were represented in the presentation of the grievor's case by his Trade Union.

There is no dispute that the culminating incident precipitating Mr. Craib's discharge occurred on August 13, 1983, when he left the place of work at 1440 hrs without the authorization of his supervisor. In so doing, the grievor was assessed 20 demerit marks for leaving the work place one hour and twenty minutes prior to his normal departure time. In light of the grievor's record of 55 demerit marks the Employer resolved to terminate his services upon confirmation of the occurrence of the culminating incident.

Leaving the work place without authorization prior to departure time is misconduct that may attract a disciplinary response (see **CROA 1041**).

The Trade Union submitted that the grievor's dismissal was simply too harsh a penalty for the infraction that was committed. Accordingly it was argued that the twenty demerit marks ought to be replaced by a milder penalty that would result in the grievor's reinstatement.

The grievor does not contest that he left the work premises as alleged, at 1440 hrs on the afternoon of August 13, 1983. He argued however that "early quits" are a common practice amongst employees at the work premises. In short, the submission was made that Mr. Craib has been singled out for discriminatory treatment by the Employer. The grievor's statement made during the course of the investigation of his infraction indicated that he left early because he was "tired, hot and dirty and wanted to go home".

The Employer vigorously denied that a practice existed amongst clerical employees as alleged by the grievor. Rather, the practice amongst yard employees is to permit their early departure upon completion of their regular duties. This is not, however, the practice that is applied to clerical employees.

In other words, the distinguishing feature that differentiated the grievor's situation from the practice of the yardmen is the notion that the latter have the authorization of the Company to leave early.

In having regard to the foregoing, I am satisfied that the grievor committed an infraction that warranted recourse by the Employer to a disciplinary sanction. Although I am not bound by the guidelines of "the Brown System" with respect to the imposition of demerit marks, nothing that has been adduced herein has persuaded me, particularly in light of the grievor's past disciplinary record, to interfere with the penalty of twenty demerit marks. In this light, the grievance must be denied and the grievor's discharge is accordingly sustained.

(signed) DAVID H. KATES
ARBITRATOR