

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1233

Heard at Montreal, Thursday, April 12, 1984

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

On June 2, 1983, Trackmen R. G. Partaker and R. Zastre had lunch at the Continental Motor Inn on McPhillips Street, Winnipeg, Man. and consumed a bottle of beer with the meal. The Company dismissed both employees for violation of Rule G.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Union contends that: (1.) Dismissal for consumption of one bottle of beer with their meal is excessive. (2.) R. G. Partaker and R. Zastre be reinstated to their former position with compensation at their regular rate of pay as Trackman and all other benefits from June 3, 1983.

FOR THE BROTHERHOOD:

(SGD.) H. J. THIESSEN

SYSTEM FEDERATION GENERAL CHAIRMAN.

There appeared on behalf of the Company:

D. A. Lypka – Assistant Supervisor Labour Relations, Winnipeg
R. A. Colquhoun – 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. Y. Gaudreau – Vice-President, Ottawa
G. Valence – General Chairman, Sherbrooke

AWARD OF THE ARBITRATOR

Pursuant to Step I of the grievance procedure the Trade Union was obliged to meet the twenty-eight calendar day time limit for the presentation of the grievors' grievance:

Step I The aggrieved employee, the Local Chairman or his duly authorized representative, shall present the grievance in writing to his immediate supervisor within twenty-eight calendar days from the date of the cause of the grievance and a decision shall be rendered in writing within twenty-eight calendar days of receipt of the grievance. (emphasis added)

Failure to meet the mandatory time limits provided under the grievance procedure can result, in the absence of an extension, in the grievances being considered as settled:

18.9 A grievance not progressed within the time limits specified shall be considered settled on the basis of the last decision and shall not be subject to further appeal.

The grievors' acknowledged receipt of their Form 104 advising them of their termination for alleged violation of Rule G on June 13, 1983. The twenty-eight calendar day time limit for the presentation of the grievance in writing to their immediate Supervisor commenced on June 14 and expired on July 11, 1983.

The uncontradicted evidence disclosed that the letter containing the grievors' grievances was communicated to the Employer's representative on July 12, 1983. In short, the evidence disclosed that the Trade Union missed the deadline for the presentation of the written grievances by approximately eleven (11) hours.

The litany of CROA cases marshalled before me in the Company's brief establishes beyond a doubt that an Arbitrator is bound (just as the parties are) to the mandatory time limits for the presentation of a grievance contained in the collective agreement. An Arbitrator cannot amend, alter or otherwise undermine the parties' intentions as expressed in the language of the collective agreement. His personal views of a party's treatment of a tardy grievance must give way to the parties' intentions.

With these considerations in mind the uncontradicted evidence established that the written grievances were not presented to the grievors' immediate supervisor as required by Step I of the grievance procedure. The Trade Union was late and it matters not whether it was late by one hour or one day. I am simply obliged to enforce the provisions of the collective agreement.

Nor can the Trade Union evade its responsibility for compliance with the mandatory time limit by blaming the Postal Service. Whether or not the Post Office was directly or indirectly responsible for the belated arrival of the grievances is immaterial. The obligation to meet the time limits was the Trade Union's. It simply acted at its peril (if that was the cause of the delay) in adopting the Postal Service as its medium for communication. (See **CROA 149**).

For all the foregoing reasons I have not the jurisdiction to entertain the grievances advanced on the grievors' behalf.

(signed) DAVID H. KATES
ARBITRATOR