

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1268

Heard at Montreal, Thursday, July 12, 1984

Concerning

### CANADIAN PACIFIC LIMITED

and

### BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

#### **DISPUTE:**

On August 25th, 1983, Mr. D. Cheeseman, Group 1 Machine Operator on the No. 2 Steel Gang missed his ride on the Company bus from the Boarding Cars to the work location. As a result, Mr. Cheeseman missed one day's work and lost one day's wages. Mr. Cheeseman claims that he should be paid for all hours he would have otherwise worked on that date.

#### **JOINT STATEMENT OF ISSUE:**

The Union contends that: (1.) Mr. D. Cheeseman missed the bus by 2 minutes, however, there were two other vehicles going to the work site. Roadmaster R. Miller would not allow either vehicle to take Mr. Cheeseman along. (2.) The Company violated Section 18.1 Wage Agreement 41, when Mr. Cheeseman was suspended for one day without investigation. (3.) That he be paid for all hours he could have worked on August 25th, 1983, at his regular rate of pay.

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

#### **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

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

## **AWARD OF THE ARBITRATOR**

The issue raised herein is whether Mr. D. Cheeseman was properly docked a day's wages for a missed day of work because he missed the bus provided by the Company in order to take him to the work site.

The Company's rule requiring its employees to arrive on time at the appropriate place to catch the bus taking them to the work site is not argued as being an unreasonable rule. The Trade Union's complaint is simply that other vehicles were available to the Company to take the grievor to the work site when he arrived to catch the bus two minutes late. Roadmaster Miller simply refused the grievor the opportunity to be taken in one of those vehicles to the work site. It was not demonstrated that the vehicles in question were being used for Company purposes or would have otherwise inconvenienced the Company's operations had they been used to take Mr. Cheeseman to the work site.

As stated by the Company, the sole reason the grievor was denied access to those vehicles was in order to impress upon him (and other members of his crew) the prudence of a strict adherence to the requirement of arriving on time to catch the bus to the work site. The Company's stated concern was that any laxity in the application of the rule would result in undisciplined punctuality with respect to the attendance of employees at the required time to catch the bus.

In dealing with the parties' dispute, let me emphasize immediately that I am in full agreement with the Company's objective with respect to the requirement for an employee's strict adherence to what appears to be a reasonable rule. What the Company has done in imposing a lesson upon the grievor with respect to his particular adherence to the rule is to violate a cardinal sin in traditional labour relations. The appropriate recourse for an employee's violation of a reasonable Company rule is through recourse to the disciplinary process. An employer cannot be permitted to penalize its employees by withholding from them their wages or otherwise depriving them of the opportunity to earn their wages.

In the circumstances described, Roadmaster Miller's only reason for denying the grievor access to a Company vehicle in order to take him to the work site was because he was late. He had clearly breached the rule. In my view Roadmaster Miller ought to have made what reasonable arrangements that were available to transfer the grievor at his expense to the work site. And, moreover, the grievor should have been assessed an appropriate disciplinary penalty both for the breach of the rule and the potential inconvenience he caused the employer. It is in this manner, through recourse to "progressive discipline", that adherence by its employees to the Company's reasonable rules are achieved.

Lest this decision be misunderstood, I wish to make the following remarks. Had the evidence shown that the Company's vehicles were not available for the purpose of taking the grievor to the work site or that they were otherwise allocated for the performance of work related duties then the Company's Supervisor would not have been required to taxi a recalcitrant employee to the work site. It appears to me, however, that absolutely nothing is achieved if the vehicle is not scheduled for use and an employee must forego a day's work merely because he must be taught a lesson. In short, that objective is more easily achieved to the advantage of both parties through recourse to an appropriate disciplinary penalty.

For all the foregoing reasons, the grievor is to be reimbursed for his lost day's pay. I shall remain seized for the purpose of implementation.

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