CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1321

Heard at Montreal, Wednesday, January 9, 1985

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

On April 30, 1984, Mr. W.S. Russell, Track Maintenance Foreman was demoted to the position of Trackman for irresponsible actions incompatible with the duties of Track Maintenance Foreman, Brocket, Alberta, March 23, 1984.

JOINT STATEMENT OF ISSUE:

The Union contends that permanent demotion to Trackman is too severe a penalty and requests that Mr. W.S. Russell be reinstated as Track Maintenance Foreman with no loss of seniority and paid the difference in rate of pay to that of Foreman since April 30, 1984.

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

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) H. J. THIESSEN	(SGD.) L. A. HILL
SYSTEM FEDERATION GENERAL CHAIRMAN	GENERAL MANAGER, OPERATION AND MAINTENANCE.

There appeared on behalf of the Company:

F. R. Shreenan	– Supervisor, Labour Relations, Vancouver
R. A. Colquhoun	– Labour Relations Officer, Montreal
O. N. McFarlane	– Assistant Supervisor, Labour Relations, Vancouver

And on behalf of the Brotherhood:

H. J. Thiessen	– System Federation General Chairman, Ottawa
R. Y. Gaudreault	– Vice-President, Ottawa

AWARD OF THE ARBITRATOR

The grievor, W.S. Russell, Track Maintenance Foreman contests his permanent demotion for incidents involving infractions of the UCOR rules that might have precipitated a serious accident. The grievor's personal record also shows that he was disciplined on two previous occasions that involved his infraction of the UCOR rules. In the one case he was assessed ten demerit marks and in the other he sustained a demotion for a two year period. The Trade Union does not challenge the committal of the infractions that resulted in the permanent demotion or indeed that a demotion is not an appropriate disciplinary response. The Trade Union merely questions the appropriateness of a "permanent" demotion.

Short of discharge, the Company concedes that it could not have imposed a more severe penalty. The Company suggests, however, that not only has the grievor, as evidenced by his record, shown he is oblivious to the UCOR rules in circumstances where he knows or is deemed to know their provisions but also cannot be entrusted with the responsibility for ensuring, in his position as Track Maintenance Foreman, that the members of his crew have complied with those same provisions. In other words, the grievor has shown himself to be unreliable in the discharge of the supervisory duties over the employees under his responsibility.

In light of the inability of the Trade Union to advance any evidence that would explain the grievor's mediocre behavior while performing Track Maintenance Foreman's duties, I am simply deprived of any basis for moderating the admittedly severe penalty imposed upon him. The Company has established that the grievor represents a threat to his own safety and that of his crew and thereby cannot be entrusted with supervisory responsibilities. Moreover, past corrective actions have not resulted in the grievor's rehabilitation. Accordingly, I cannot conclude that the permanent demotion is an unreasonable disciplinary response.

The grievance is accordingly denied.

(signed) DAVID H. KATES
ARBITRATOR