

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1519

Heard at Montreal, Tuesday, July 8, 1986

Concerning

**CANADIAN PACIFIC LIMITED**

and

**UNITED TRANSPORTATION UNION**

### **DISPUTE:**

Assessment of 20 demerit marks against the record of Conductor G. A. North, Moose Jaw, for – "attempting to receive remuneration not provided for by the collective agreement".

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

Conductor North was ordered at Moose Jaw, Saskatchewan, at 0115 for 0315 to operate a train to Swift Current. On arrival at Swift Current he entered the yard office at 1110 and determined that he stood first out and could be called at approximately 1300 to protect Train 404 if he did not book rest. Conductor North advised that as he would receive no rest under that condition, he would protect the train only if he would receive payment for the time awaiting its arrival. This was not acceptable to the Company and, therefore, Conductor North booked rest.

Because Conductor North placed a monetary condition on his availability for foregoing rest, the Company took a statement from him and subsequently assessed him 20 demerit marks as stated in the "Dispute".

The Union contends there was nothing wrong with Conductor North requesting payment if he was to forego rest for the Company's convenience and needs and the imposition of discipline was unwarranted.

The Company denies this contention and states that the discipline is warranted.

### **FOR THE UNION:**

**(SGD.) J. H. MCLEOD**  
GENERAL CHAIRMAN

### **FOR THE COMPANY:**

**(SGD.) D. A. LYPKA**  
FOR: GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

D. A. Lypka – Supervisor, Labour Relations, Winnipeg  
G. W. McBurney – Assistant Supervisor, Labour Relations, Winnipeg  
B. P. Scott – Labour Relations Officer, Montreal

And on behalf of the Union:

J. H. McLeod – General Chairman, Calgary  
P. P. Burke – Vice-President, Calgary

## **AWARD OF THE ARBITRATOR**

The principal issue in this case is whether the grievor engaged in misconduct that warranted a disciplinary penalty of twenty demerit marks.

As I understood the evidence the grievor was entitled under the collective agreement to book rest. He also could have offered his services to the Employer in lieu of exercising that entitlement.

Because the grievor discerned that the Company was in a manpower dilemma thereby making its operations vulnerable to delay he offered to defer booking rest and extend his services provided he was paid for a layover period of approximately twelve hours. The Company declined his offer.

Nonetheless, because the Company concluded that the grievor attempted to secure a benefit that was not covered under the collective agreement he was disciplined. The Company characterized the grievor's effort as tantamount to "extortion" and/or "holding it to ransom". As a result it determined that the grievor's actions warranted a disciplinary penalty of twenty demerit marks.

I cannot agree that the grievor engaged in any act of misconduct whatsoever. Although the Company need not condone such conduct as engaged in by the grievor (which it didn't by refusing his overture) the grievor has not committed an infraction that would justify any disciplinary response. Quite clearly, the grievor exploited for his own selfish purposes the rest period benefit to secure a material advantage that was not contemplated by the collective agreement. The Company's rejection, in my view, served the purposes of demonstrating that such practices will not be countenanced. And that is when the episode should have been dropped.

In my view, the grievor's conduct simply did not amount to misconduct that might be interpreted as being tantamount to "extortion" or other like serious infractions.

Accordingly, the grievance succeeds. The Company is directed to remove the twenty demerit marks from the grievor's record.

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