

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1543

Heard at Montreal, Wednesday, July 9, 1986

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Forty (40) demerit marks were assessed to Y. Senecal's record due to his lack of punctuality.

JOINT STATEMENT OF ISSUE:

On December 9, 1985, forty (40) demerit marks were assessed to Y. Senecal's record for not being punctual.

On December 9, 1985 employee Y. Senecal was advised of his dismissal due to an accumulation of over 60 demerit marks affixed to his record.

The Brotherhood maintains that the disciplinary measure of forty (40) demerit marks taken against the employee due to his lack of punctuality is excessive.

The Brotherhood request the withdrawal of the 40 demerit marks from the employee's record and his reinstatement at work with full restitution of lost salary and benefits.

The Company denied the grievance.

FOR THE BROTHERHOOD:

(SGD.) D. J. BUJOLD
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. L. BENNER
DIRECTOR OF MATERIALS

There appeared on behalf of the Company:

P. P. Macarone – Supervisor, Training & Accident Prevention, Montreal
J. Y. Noel, C.D. – Assistant Manager of Materials, Montreal
P. E. Timpson – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. Germain – Vice-General Chairman, Montreal
D. J. Bujold – General Chairman, Montreal
J. Manchip – Vice-General Chairman, G.S.T., Montreal
Y. Senecal – Grievor

AWARD OF THE ARBITRATOR

The grievor has been diagnosed as suffering from anxiety and insomnia. He is under the care of a physician and psychologist with respect to his medical difficulty.

The grievor's record of lateness and early departures is abysmal. Many of these timekeeping incidents are related directly to his requirement to attend medical appointments. The Company claims that these incidents did not form the basis of its decision to terminate the grievor.

Nonetheless several other incidents that were relied upon are alleged to have been a product of the grievor's misconduct by virtue of his being inattentive to his obligation to report for work on time. Nonetheless, some of these incidents of poor timekeeping such as those relating to his "sleeping in" may be attributable to the grievor's medical ailment. Whereas, other incidents of lateness relating to his being caught in traffic or to a mechanical breakdown of his automobile may be attributable to causes other than his medical disability.

Indeed, some of the work-related accidents that the grievor has been disciplined for in the past may very well have been rooted in his inability to get enough sleep. In other words, it is difficult, as the evidence disclosed, to separate acts of misconduct for which corrective discipline is intended to have a positive effect from those incidents relating to his medical disability for which corrective discipline would be most irrelevant.

The real problem in this case is that the grievor never made full disclosure either to his Employer or his Trade Union representative as to the nature and severity of his medical ailment. As a result the Employer treated each timekeeping incident as infractions for which discipline under the Brown System may have been warranted. And, apparently, the grievor's reluctance to make full disclosure was attributable to misgivings in publicizing his affliction with a psychiatric problem.

The solution I have devised for this very difficult situation involves the grievor's reinstatement without compensation for the period since his discharge. In its stead the grievor is to be treated as being on an indefinite medical leave of absence without pay. The forty demerit marks are accordingly to be deleted from his record.

The grievor is not to be returned to active duty until his attending physician has certified that the grievor is medically fit to resume employment in the reliable manner expected of a regular employee.

The Company should then be entitled to secure confirmation from its own Company physician with respect to the grievor's capacity to resume his normal duties.

Should any dispute arise with respect to the grievor's readiness to return to work, as aforesaid, such dispute shall be referred to the Arbitrator for resolution.

The Arbitrator shall remain seized.

(signed) DAVID H. KATES
ARBITRATOR