

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1560

Heard at Montreal, Wednesday, September 10, 1986

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

Whether or not the discipline assessed against the record of Trainman P. A. Lafleur was progressed at Step 1 within the time limits specified in article 39, Clause (c).

JOINT STATEMENT OF ISSUE:

Trainman P. A. Lafleur was notified on October 20, 1983 that his record was debited with 20 demerits for "failure to be in position to perform assigned duties resulting in unnecessary delay to passenger train, October 6, 1983 at North Bend, B.C."

Mr. Lafleur was on leave of absence under doctor's care from November 16, 1983 until December 22, 1984. On January 9, 1985, a grievance was initiated at Step 1 protesting the discipline assessed on October 20, 1983.

The Company denied the grievance contending it was no longer timely in accordance with the provisions of article 39, Clause (c), Step 1, which states as follows:

(c) An appeal against discipline imposed shall be processed in the following manner:

STEP 1 - Appeal to Superintendent

Within 60 calendar from the date the employee is notified of discipline assessed the employee and/or Local Chairman may appeal the discipline in writing to the Superintendent.

The appeal shall include a written statement of the employee's and/or the Union's contention as to why the discipline should be reduced or removed. A decision will be rendered in writing within 60 calendar days of the date of the appeal.

The Union contends that because Mr. Lafleur was under doctor's care and in no condition to file a grievance from November 16, 1983 to December 22, 1984, this time must be deducted when determining the 60 day time limit.

The Union also contends that when this time is deducted the grievance is timely and should be handled on its merits.

The Company contends that inasmuch as the appeal at Step 1 was not initiated within 60 calendar days as provided in article 39, Clause (c) and mutual agreement as provided for in article 39, Clause (e) to extend the time limit was not reached, the appeal, in accordance with article 39, Clause (d) is invalid and not subject to further appeal.

FOR THE UNION:

(SGD.) J. H. MCLEOD
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) L. A. HILL
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

R. T. Bay – Assistant Supervisor, Labour Relations, Vancouver
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 Union maintains that the collective agreement's time limits for proceeding with a grievance should not apply to the grievor.

The Union's position is understandable. It is plainly motivated out of compassionate consideration for the special circumstances of the grievor, who was absent, because of illness, for at least a portion of the 60-day appeal period provided within Step 1 of the Grievance Procedure. It is common ground that a grievance must be filed in writing with the Superintendent within 60 calendar days of the assessment of discipline as provided in article 39 of the collective agreement. In fact because of the circumstances of the grievor's lengthy illness, the appeal against the grievor's discipline was brought to the Division Superintendent by the Local Chairman over a year after the article 39 deadline of January 3, 1984.

In the instant case there is no conclusive evidence that the grievor's circumstances were such that the Union could not take instructions that would have enabled it to file a grievance in a timely manner. While it appears that some of his time off was due to an emotional disturbance, that does not appear to have been an operative factor in the earliest weeks of his absence. While the grievor was notified of his discipline on October 20, 1983 he remained at work until November 16th and did not come under psychiatric care until December 12th.

Article 39 (d) of the collective agreement provides in part:

Any grievance not progressed by the Union within the prescribed time limits shall be considered invalid and shall not be subject to further appeal. ...

Sub-paragraph (e) specifically provides that the parties may extend a time limit by mutual agreement. Having regard to the clear language of sub-paragraph (d), however, it is plainly not open to an Arbitrator to vary the time limits established within article 39 when either of the parties does not agree to do so. While I appreciate the motives that underlie the Union's position, I must conclude that I am without jurisdiction to grant the relief requested. For these reasons the grievance must be dismissed.

(signed) MICHEL G. PICHER
ARBITRATOR