

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1573

Heard at Montreal, Thursday, October 16, 1986

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Claim for all wages lost since December 2, 1985, when employee Mr. Simon Boisvert was suspended and subsequently dismissed December 18, 1985. Claim also for immediate reinstatement to position of Security Guard.

JOINT STATEMENT OF ISSUE:

On December 2, 1985, Mr. Simon Boisvert was suspended pending investigation following an allegation that he had been seen sleeping in the guardhouse.

Following this suspension, a disciplinary investigation was held on December 11, 1985. The subject matter of the investigation concerned the allegation of sleeping on duty December 2, 1985, and also reporting late for duty November 29, 1985. On December 18, 1985, Mr. Boisvert was informed that he was dismissed, effective December 2, 1985, the date of his suspension.

The Brotherhood maintains that the investigation uncovered contradictions in the witnesses' statements. In addition, the evidence showed that Mr. Boisvert's problems began after he was assigned to the Racine Terminal and that he had maintained an exemplary disciplinary record from March 1980 until April 1984, when he was assigned to the Racine Terminal.

The Brotherhood maintains that the dismissal was unjust and we claim all the wages lost since December 2, 1985. We also ask that Mr. Boisvert be reinstated immediately as a Security Guard.

The employer has denied the grievance.

FOR THE BROTHERHOOD

(SGD.) J. GERMAIN
FOR: GENERAL CHAIRMAN

FOR THE COMPANY

(SGD.) JAMES M. MICKEL
CHIEF, DEPT. OF INVESTIGATION

There appeared on behalf of the Company:

R. K. Leavitt	– Superintendent System, Investigation Department, Montreal
L. Lecavalier	– Inspector - Personnel, Investigation Department, Montreal
J. Fuligno	– Investigator, Investigation Department, 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
S. Boisvert	– Grievor

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied on the material presented that the grievor, Mr. Simon Boisvert, was observed sleeping while on duty in the Guardhouse of the Company's Racine Terminal, located in Montreal Harbour. He was observed directly by two Company Investigators, placed at reasonably close range, asleep in a seated position within the Gatehouse for a period in excess of thirty minutes. The evidence establishes that in fact for a substantially longer period of time, for over an hour and a half, Mr. Boisvert had sat motionless within the Gatehouse after extinguishing the light, and having locked the doors to the building. When the Investigators approached the Gatehouse to finally confront the grievor, they found the traffic barrier, which is exclusively controlled from inside by the Security Guard on duty, in an upright position. This would allow traffic to pass freely into and out of the terminal. When confronted by the two Investigators, the grievor declined to answer their questions and told them that he was booking off sick, without any further explanation.

During the course of the subsequent investigation, the grievor stated that he had suffered a dizzy spell, as a result of medication which had been prescribed for him for the treatment of an infection. While there is no doubt on the evidence that Mr. Boisvert was under medical care at the time, and had been given a prescription, the Company's evidence, which includes a report by Dr. Michel Grimard, its Assistant Chief of Medical Services, confirms that the medication in question, known under the trade name Doxycycline-Vibramycin does not have among its side-effects any impact on the nervous system, and does not cause drowsiness. On the material filed the Arbitrator must conclude that the grievor was asleep, and that no causal relation is established between the medication he was taking and the fact that he was not awake while on duty.

The Arbitrator finds it difficult to dismiss the submission of the Company that Mr. Boisvert locked his Gatehouse, extinguished the lights and raised the traffic barrier so as to deliberately create the conditions to enable him to sleep uninterrupted while on duty. The gravity of that offence cannot be understated. It is not disputed that on the docks of the Racine Terminal there are, typically, between seven hundred and one thousand containers of valuable merchandise in the care and custody of the Company. On the night in question the grievor effectively abandoned his duty as the individual primarily responsible for safeguarding those goods as well as the Company's property.

Are there any mitigating factors that would support some measure of discipline short of discharge in these circumstances? It is generally accepted by Arbitrators, nor is it disputed by the Company, that something less than termination would be appropriate in the case of an employee with an otherwise good record, who inadvertently dozed off for a brief moment. In light of the grievor's deliberate actions, that principle has no application in the instant case.

A further consideration is the grievor's prior record. The material establishes that in August of 1985 the grievor was subject to a severe reprimand, in October he suffered a one day suspension, and still later in the same month was awarded an additional three day suspension. While these infractions were not for sleeping on duty, but related to the grievor's repeated failure to be at work on time, and in one instance a failure to report for work without any notice to the Company, they do represent a failure on the part of Mr. Boisvert to display an adequate degree of responsibility in the discharge of his obligations to his employer. The course of progressive discipline followed by the Company put him on clear notice that a further infraction of any substance must meet with the most serious consequences. In the circumstances the grievor's record does little to support his claim that discharge was an excessive response to this culminating incident. The material also establishes that employees in like circumstances, have, in the past, been terminated for a similar infraction.

Having regard to all the foregoing, the Arbitrator must conclude, in consideration of the gravity of the grievor's actions and the seriousness of his prior record, that the Company had just cause to terminate his services. For these reasons the grievance is dismissed.

(signed) MICHEL G. PICHER
ARBITRATOR