

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1584

Heard at Montreal, Thursday, November 13, 1986

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

Refusal of the Company to reinstate laid-off Yardman R.C. Beerthuizen Thunder Bay, with pay for time lost after considering him to have resigned and subsequently closing his record for not returning to actual service within 15 days of his recall as per the provisions of Article 21, Yard Rules and Article 29, Clause (e).

JOINT STATEMENT OF ISSUE:

Mr. Beerthuizen had been laid off for a period of approximately 5 months. During this period, his 'B' card had expired and he would be unable to return to work until this card was renewed. He was notified of this in September, 1985. He was notified verbally on December 5, 1985 and on December 9, 1985, by registered mail, that he was required to return to service and that it would be necessary to renew his 'B' card by attending classes on December 9, 10 or 11, 1985 before he could commence working. He did not attend the classes on December 9, 10 or 11 and was not allowed to return to duty as his 'B' card had not been renewed.

The Union contends that Yardman Beerthuizen's attendance at a Dangerous Goods class on December 4 and his attempt to book O.K. for duty on December 10, clearly indicated his intention to return to service and that he was, in fact, withheld from doing so to renew his 'B' card. The Union requests that he be returned to service forthwith with payment for time lost.

The Company contends that Yardman Beerthuizen was given ample warning of the necessity to have his 'B' card brought up to date and failed to do so. He was given proper notice of recall for service and did not arrange to have his rules card brought up to date so that he could return to actual service. He must be considered to have not returned within 15 days as required in Article 29, Clause (e) and his record was closed accordingly. The Company declines to reinstate Mr. Beerthuizen.

FOR THE UNION:

(SGD.) J. H. MCLEOD
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) E. S. CAVANAUGH
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

D. A. Lypka – Supervisor Labour Relations, Winnipeg
B. P. Scott – Labour Relations Officer, Montreal
K. O'Brien – Assistant Superintendent, Thunder Bay

And on behalf of the Union:

J. H. McLeod – General Chairman, Calgary
L. O. Schillaci – Vice-General Chairman, Calgary

AWARD OF THE ARBITRATOR

A central fact in dispute is whether the grievor did call to book off work after he received written notice of his obligation to do so on December 9, 1985. The Union submits that the fact that no call is registered in the Clerk's records it is not unusual, since the grievor's "B" Card was expired at that date and he could not be restored to active duty. It maintains that he did in fact call during the required notice period, made an appointment to attend the UCOR Instruction and Examination Classes to be held on December 11 and was subsequently unable to attend on that date because of a car breakdown. It is common ground that Mr. Beerthuisen lives some 20 miles from Thunder Bay.

Which is more compelling inference to be drawn? The Company maintains that it heard nothing from the grievor, had no reason to believe that he intended to respond to the call to return to work, and was therefore entitled to consider employment terminated fifteen days after his recall. The Union submits that the grievor was under a misunderstanding, because he did not have a valid "B" Card, and had missed the last day of UCOR Instructions and Examinations on December 11th. It maintains that he felt that communication of his inability to complete the "B" Card Course of Instruction would have been sufficient advice to the Company that he intended to remain on its employment rolls.

On the balance of probabilities, the Arbitrator finds the account of events advanced by the Union more compelling. The substantive issue is whether employee Beerthuisen manifested a sufficient intention to continue his employment relationship. It is not disputed that on December 4, 1985, one day prior to the sending of his letter of recall by the Company, the grievor attended a Dangerous Goods Class sponsored by the Company, a course necessary for his continued employment. That is not the course of conduct of an employee who ignores or walks away from his relationship with his employer. While there is no dispute that the Clerk's notation do not reflect the calls made by Yardman Beerthuisen, the Arbitrator accepts the Union's suggestion that these might not have been recorded because the Clerks would have been aware of the expiry of his "B" Card.

In all of the circumstances I accept the grievor's account of these events. By the same token, however, the Company's actions would not have occurred but for the grievor's own failure to understand his obligations to communicate clearly with the Company notwithstanding the expiry of his qualifications card. In these circumstances the Arbitrator deems it appropriate to reinstate the grievor into his employment, without loss of seniority, but without compensation. I retain jurisdiction in the event of any disagreement respecting the interpretation or implementation of this award.

(signed) MICHEL G. PICHER
ARBITRATOR