

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1664

Heard at Montreal, Tuesday, July 14, 1987

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The permanent demotion of Bridge and Building Foreman Mr. D.A. Riguedell to the position of Bridgeman for discourteous and disrespectful behaviour towards the motel proprietor and his family and for soliciting gifts from them through his affiliation with the Company; a violation of General Rule U, Maintenance of Way Rules and Instructions, Form 568, Sicamous, B.C., June 1986.

JOINT STATEMENT OF ISSUE:

The Union contends that: (1.) The Company did not conduct an impartial investigation as required by Section 18.1, Wage Agreement 41. (2.) Mr. Riguedell did not solicit gifts as alleged. (3.) Mr. Riguedell be reinstated as B&B Foreman with all seniority and paid for any loss in earnings since his demotion.

The Company denies the Union's contention and declines claim for reinstatement and payment for loss of wages.

FOR THE BROTHERHOOD:

(SGD.) H.J. THIESSEN
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J.M. WHITE
GENERAL MANAGER, OPERATION & MAINTENANCE, WEST

There appeared on behalf of the Company:

M. Shannon	– Solicitor, Montreal
B. Mittleman	– Solicitor, Montreal
R. T. Bay	– Assistant Supervisor, Labour Relations, Vancouver
J. Klett	– B&B Master, Revelstoke
R. A. Colquhoun	– Labour Relations Officer, Montreal
L. Wormsbecker	– Observer

And on behalf of the Brotherhood:

M. Gottheil	– Assistant to Vice-President, Ottawa
H. J. Thiessen	– System Federation General Chairman, Ottawa
L. DiMassimo	– Federation General Chairman, Montreal
R. Della Serra	– General Chairman, Montreal
D.A. Riguedell	– Grievor

AWARD OF THE ARBITRATOR

While counsel for both parties dispute the quality of much of the evidence submitted, in the Arbitrator's view this grievance can be disposed of substantially on the basis of the grievor's own evidence. That evidence establishes that at all material times the grievor worked as a Bridge and Building Foreman, in charge of a gang in the Revelstoke Division. Part of his responsibilities involved booking motel accommodation, to be paid for at the Company's expense, for his gang while they were assigned to remote locations.

During 1985 and 1986 the grievor's gang was housed for extended periods at the Alpiner Inn Motel in Sicamous, B.C., owned by Mr. and Mrs. Gottwald. On June 19, 1986, the gang, along with their wives, children and friends, had a barbecue cookout at the motel to celebrate the wedding anniversary of one of the employees. In the latter stages of the party they were joined by Mr. Gottwald. After what the grievor admitted to being some heavy drinking, he got into an argument with the motel proprietor during which he used abusive language to describe both Mr. Gottwald and his wife.

Mr. Riguedell admits that on some 4 or 5 occasions during the spring and summer of 1986 he asked the proprietors of the motel to supply him with a bottle of liquor. They apparently complied with his requests on at least 2 occasions. While he characterizes these incidents as the "loan" of alcohol to him, it appears that he never returned the liquor given to him by the motel proprietors until after the Company investigation giving rise to the discipline that is the subject of this grievance. The grievor also admitted that on occasion, and specifically prior to the incident of June 19, 1986, he had threatened the proprietors of the motel with the possibility that he would move his work crew to some other motel.

The events surrounding the grievor's conduct came to the Company's attention as a result of a verbal complaint initiated by an employee holding union office. Statements were subsequently obtained from several employees, as well as from Mr. and Mrs. Gottwald. The investigation, conducted by Bridge and Building Master James Klett, resulted in the imposition of discipline in the form of a demotion of the grievor from the rank of Bridge and Building Foreman to the position of Bridgeman. The discipline was imposed for his disrespectful behaviour towards the Gottwald family and for soliciting gifts, in the form of alcohol, from them through the abuse of his authority as Foreman.

On a careful review of the material I am satisfied that both allegations are made out. While the grievor's testimony seeks to explain his actions, it does not excuse them. The coupling of threats to move his crew to another motel with repeated requests for alcohol to be supplied, apparently without any immediate payment or clear understanding about future payment, suggests that the grievor was abusing his position to gain favours from Mr. and Mrs. Gottwald. If the purported "loan" of the alcohol had been repaid within a reasonable time, and certainly before the next request, that suggestion might be rebutted. In fact, however, the grievor's own evidence confirms that alcohol was obtained in this manner, and was sought on still more occasions, without any repayment whatever prior to the institution of a disciplinary investigation by the Company. I am compelled to conclude that the grievor was, to put it in the vernacular, throwing his weight around, in a manner inconsistent with his prerogatives and responsibilities as a Foreman, and in a fashion calculated to bring discredit upon the Company.

Counsel for the Union submits that the investigation conducted by Mr. Klett was flawed and did not amount to an impartial investigation as in the meaning of article 18.1 of the Collective Agreement which provides as follows:

18.1 No employee shall be suspended (except for investigation), disciplined or discharged until he has had a fair and impartial investigation and his responsibility established.

The principal thrust of the objection is that Mr. Klett initially approached the Gottwald's, and that their complaint about the grievor only emerged after his suggestion to them that he required something in writing before anything could be done about the grievor's conduct. Of particular concern to the Union's counsel is the fact that a follow-up letter was obtained from the Gottwald's, the terms of which were apparently drafted by Mr. Klett based on allegations that had been related to him.

These facts cause the Arbitrator some concern. The investigative procedure contemplated in article 18.1 of the Collective Agreement should not be construed as requiring a judicial standard of procedural fairness. As the investigating officer is charged with discovering the facts, the process must be to some degree inquisitorial. Notwithstanding that reality, however, doubt can be cast on the process whenever an investigator is seen to put words in the mouth of persons offering statements against an employee. In the instant case, however, I am satisfied that

there has been no miscarriage of justice or departure from the basic standard of fairness and impartiality contemplated under the article. It is common ground that all of the statements made by the motel owners against the grievor, including the one prompted by Mr. Klett, were provided to the grievor and, moreover, that he was given the fullest opportunity to question both Mr. and Mrs. Gottwald during the investigation procedure, although he declined to do so. On the whole, although the Arbitrator does not condone the drafting of the final Gottwald statement by Mr. Klett, the inevitable conclusion is that the grievor was given every opportunity to know the nature of the accusations made against him, to confront his accusers and to fully make his own case without undue restriction. Moreover, the substance of the third statement is substantially in keeping with the first two statements made by the Gottwald's, and in the Arbitrator's view no prejudice to the grievor is demonstrated. For these reasons the procedural objection of the Union cannot be sustained.

With respect to the merits of the grievance, the Arbitrator accepts the position of the Company that the grievor's conduct merited his demotion from the position of Bridge and Building Foreman. While that demotion is described as being "permanent", it should be stressed that nothing in the Company's action or in this decision stands in the way of the grievor again returning to that position, should he demonstrate the degree of responsibility and positive behaviour that would justify his promotion in the future. For these reasons the grievance must be dismissed.

(signed) MICHEL G. PICHER
ARBITRATOR