

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1666

Heard at Montreal, Tuesday, July 14, 1987

Concerning

CANADIAN PACIFIC LIMITED

AND

UNITED TRANSPORTATION UNION

DISPUTE:

Discipline of 20 demerit marks assessed to record of Conductor R.A. Hagerty, Moose Jaw, for failure to appear for a properly scheduled investigation at 1000, CST, May 20, 1986.

JOINT STATEMENT OF ISSUE:

As investigation was to be scheduled to have Conductor R.A. Hagerty give his statement in connection with an incident which took place on May 10, 1986. On May 16, 1986, Conductor Hagerty, in the presence of Local Chairman B.L. McLafferty, was advised to attend this investigation on Monday, May 19, 1986.

Mr. Hagerty did not attend this investigation due to the fact that he was at work at that time. Mr. Hagerty had arrived Moose Jaw from Swift Current at 0935, entered the station at 0955 and went off duty on 1010 on May 19, 1986. Mr. Hagerty did not contact a Company officer to advise that he was not attending the investigation nor did he contact a Company officer to arrange an alternate date.

The Company contends that at the time the May 19 investigation date and time were scheduled, Mr. Hagerty was advised of an alternate date and time should he be unable to attend the first investigation due to being at work. This alternate date and time was to have been May 20, 1986 at 1000 CST.

The Union contends that neither the grievor nor the Local Chairman can recall being advised of the alternate date and time of the investigation. From this, the Union feels that the investigation on May 20, 1986 was not properly scheduled as there was some misunderstanding between the parties involved and, therefore, the discipline is unwarranted and requests its removal.

The Company contends that the evidence adduced at the investigation has established Conductor Hagerty's responsibility for the offence and that the discipline assessed was warranted. The Company has declined to remove the discipline from Conductor Hagerty's record.

FOR THE UNION:

(SGD.) W. M. JESSOP
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

D. A. Lypka	– Supervisor Labour Relations, Winnipeg
G. W. McBurney	– Assistant Supervisor, Labour Relations, Winnipeg
B. P. Scott	– Labour Relations Officer, Montreal
A. Hanevelt	– Assistant Superintendent, Moose Jaw

And on behalf of the Union:

W. M. Jessop – General Chairman, Calgary
P. P. Burke – Vice-President, Calgary

AWARD OF THE ARBITRATOR

In this case, as in **CROA 1665**, the Company maintains that because the joint statement of issue reflects the Union's position that no discipline whatever was justified in the circumstances, and does not expressly address the possibility of a reduction in penalty, the Arbitrator is without jurisdiction to mitigate the penalty. For the reasons provided in Case 1665, that position is not accepted.

While there appears to be some difference between the parties respecting whether Conductor Hagerty understood that May 20, 1986 was to be the alternate date for his investigation, there is no doubt that he was aware that the initial time established for the investigation was May 19th, 1986 at 1000 CST. It is also clear that he was on the work premises at that time, on May 19th, having just come off duty. He nevertheless failed to attend or request a rescheduling, presumably because he was too tired at that point. The Arbitrator has difficulty with the suggestion of the Union that the Company had the means to know that the grievor had previously worked a tour of duty, and therefore should have presumed that he would be too tired to proceed at the appointed time on May 19th. There is nothing in the material to suggest that Conductor Hagerty was unable to communicate with Assistant Superintendent Babson, the Company Officer responsible for the investigation, to explain his circumstances and request an adjournment. Given the grievor's failure to provide any good explanation for his conduct in the circumstances, the Arbitrator must conclude that he did fail to attend the scheduled disciplinary investigation as alleged by the Company. In these circumstances the fact that an alternate investigation might have been established on the following day, May 20th, is of no consequence, as the grievor claims no knowledge of that and did not, in any event, appear or request a change.

The smooth functioning of the investigative procedures contemplated under the collective agreement is essential to the orderly processing of discipline with the Company's operations. If properly pursued it also benefits the employees who are the subject of the investigation, since the prompt and full disclosure of all facts and allegations will normally be important to the preparation of their own case. An orderly investigation procedure is, moreover, important to the grievance and arbitration process, which culminates in the reliance of this Office, in substantial part, on the record of those proceedings. The frustration of the investigation process, whether by inadvertence, indifference or design, must therefore be viewed seriously. For these reasons the Arbitrator finds that the imposition of 20 demerits was within the appropriate range of disciplinary response, and the grievance must be dismissed.

(signed) MICHEL G. PICHER
ARBITRATOR