

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1681

Heard at Montreal, Tuesday, September 8, 1987

Concerning

### CANADIAN PACIFIC LIMITED

And

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

#### DISPUTE:

Application of article 27.1, when employee D. Jacques was not allowed to work his regular shift because of his failure to adhere to Company rules. Effect of article 24.1 / 25.2 and article 23.11 which established employee D. Jacques as the permanent incumbent of the position, with specific hours and days of work.

#### JOINT STATEMENT OF ISSUE:

Mr. D. Jacques was absent from duty, account illness, on May 10, 1986; the hours of his position (mail driver) are 1500 hrs. to 2400 hrs. On May 11, 1986, Mr. Jacques was informed not to report for duty. By not allowing Mr. Jacques to report for duty and depriving him the opportunity of earning a day's wages, the Company's action has the effect of a suspension without first allowing for a fair and impartial hearing as provided for in article 27.1.

The Company maintains local rules state an employee who has been absent, account illness, must report back as available for duty at least 8 hours prior to returning to active duty. The Union contends the employee was not aware of such a rule, as written rules were never given to the grievor nor are the rules posted.

The Union further contends Mr. Jacques was the incumbent of the position by virtue of either 24.1 or 25.2 of the collective agreement and should be allowed to work the days and hours of the position provided by article 23.11. The Company violated these articles when a junior employee was assigned to a position held by a senior employee.

The Union requested full restitution.

The Company denied the grievance on the basis that the grievor did not advise of his return to work on the 1500 shift May 11, 1986 until 1445. The Company, at 1300, May 11, 1986, had arranged for a replacement for the grievor on the 1500 shift.

#### **FOR THE BROTHERHOOD:**

**(SGD.) D. J. BUJOLD**  
GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) R. A. DECICIO**  
FOR; GENERAL MANAGER

There appeared on behalf of the Company:

R. A. Decicco – Supervisor Labour Relations, Toronto  
P. E. Timpson – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. H. Germain – General Chairman, Montreal  
J. Marien – Local Chairman, Montreal  
C. Pinard – Vice-General Chairman, Montreal

## AWARD OF THE ARBITRATOR

The Union does not contend that the Company is not entitled to make local rules respecting the requirement of an employee who is absent on account of illness to give notice prior to returning to active duty. Nor is it argued that the Company is not entitled to maintain a rule requiring eight hours' notice, as is the rule in the St. Luc office yard where the grievor was employed. Moreover there is nothing in the collective agreement which prevents the Company from maintaining such rules on a verbal basis or, to put it differently, requiring their posting or publication in a written form.

Needless to say, however, when a Company fails to post or circulate rules in a written form it does so at its peril. An employee that can establish that he or she was unaware of the rule may be successful in avoiding its application. As a general matter if an employer wishes to invoke a rule in a way that impacts negatively upon an employee it must establish, **prima facie**, that the employee knew or reasonably should have known the rule.

In the instant case the Union asserts that on May 10, 1986 Mr. Jacques was unaware of the unwritten rule at the St. Luc Yard requiring eight hours' notice of an employee's return from an absence due to illness. The material establishes that Mr. Jacques' transfer to the St. Luc Yard office was only a short time prior to the incident. The Union asserts that Mr. Jacques was never made aware of the requirement to give eight hours notice upon a return from illness. On the other hand, the Company's case contains no assertion that he was made aware of the rule or evidence to establish that he had reason to know the rule. In these circumstances I must conclude that his claim is well founded. The grievor shall therefore be compensated for the hours that were denied to him on May 11, 1986. I retain jurisdiction in the event of any dispute respecting the amount of compensation.

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**