

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1716

Heard at Montreal, Wednesday, 11 November 1987

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

For consuming alcohol in Boarding cars at Winalw, B. C., on October 2, 1986, violation of Rule 1 of Sleeping and Boarding Car Occupants Rules and Regulations, Messrs. F. Garcia and E. L. Crampton were assessed 30 demerits. Mr. J. J. LaPlante, 40 demerits account also causing damage and Mr. R. J. Gillis, Foreman, 45 demerits account additionally violating Rule 170, Form 568, Maintenance of Way Rules and Instructions.

JOINT STATEMENT OF ISSUE:

The Union contends that: **1.** Discipline was issued to the grievors prior to completing investigation in violation of Section 18.1, Wage Agreement 41. **2.** The damage was repaired immediately and paid for by Mr. LaPlante. **3.** The discipline to be removed from grievors as it is not warranted and is considered too severe.

The Company denies the Union's contention and declines to remove the demerits issued.

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

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

There appeared on behalf of the Company:

B. L. Mittleman – Counsel, Montreal
F. R. Shreenan – Supervisor, Labour Relations, Vancouver
J. Robson – Assistant Supervisor, Labour Relations, Vancouver
Henry James – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

M. Gottheil – Assistant to Vice-President, Ottawa
M. L. McInnes – System Federation General Chairman, Ottawa
L. D. DiMassimo – Federation General Chairman, Ottawa
G. Kennedy – General Chairman, Castlegar
K. Deptuck – General Chairman, Winnipeg
R. Della Serra – General Chairman, Montreal

AWARD OF THE ARBITRATOR:

The Arbitrator accepts the position of the Company that the consumption of alcohol by employees housed in boarding cars is a serious infraction. It is also true, however, that the discipline imposed must be appropriate to the circumstances of the individual employee, having regard to the nature of his or her conduct, as well as such factors as the length of service and the quality of the employee's prior record.

Employees Garcia and Crampton were each assessed thirty demerits for a violation of Rule 1 of the Sleeping and Boarding Car Occupants Rules and Regulations. The material establishes that they each consumed three bottles of beer in the kitchen of the boarding cars at Winslaw, British Columbia on the evening of October 2, 1986. Mr. Garcia has twenty-six years of service with the Company, during which time he has, remarkably, never once been the subject of discipline. He was, nevertheless, assessed the same penalty as Mr. Crampton, an employee without any prior disciplinary record, with only four years of service. In the Arbitrator's view the result is inequitable. I am satisfied, on the whole, that the imposition of ten demerits against Mr. Garcia, and twenty demerits against Mr. Crampton is more appropriate in the circumstances. Their records shall therefore be amended accordingly.

The evidence establishes that Grievor LaPlante consumed a large quantity of beer and hard liquor, continuing his drinking well after the others had gone to bed. His conduct became violent, and resulted in damage to the kitchen of the Company's boarding car. In the circumstances I am satisfied that the imposition of forty demerits was within the appropriate range of disciplinary response. The grievance of Mr. LaPlante is therefore dismissed.

The Arbitrator cannot agree with the assessment of forty-five demerits against Foreman Gillis. While it is true that he bears a particular responsibility for the conduct of the employees under his supervision, which would appear to extend to their off-duty conduct while they remain on Company property, it does not appear that Mr. Gillis was aware of the excesses engaged in by Mr. LaPlante, or in any way condoned them. On the contrary, the evidence establishes that upon being awakened by the noise caused by Mr. LaPlante, Foreman Gillis immediately took control of the situation, sent LaPlante to bed and, the following morning required him to clean up the mess he had caused. While these actions do not exonerate Mr. Gillis from blame, they are among a number of mitigating factors to be considered. Another consideration is that Mr. Gillis, also an employee of four years service, had a clear disciplinary record at the time of the incident. On the whole I am satisfied that thirty demerit marks is a more appropriate disciplinary response in his case. His disciplinary record shall, therefore, be amended accordingly.

(sgd.) MICHEL G. PICHER
ARBITRATOR