

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1936

Heard at Montreal, Thursday, 13 July 1989

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Discipline assessed the record of Engineer T.M. Kelly, Vancouver, B.C. for failing to report for duty after accepting a proper call resulting in cancellation of Haig Turn and unnecessary expense to the Company; Coquitlam, B.C., February 5, 1988.

JOINT STATEMENT OF ISSUE:

After an investigation held on February 8, 1988, the Company subsequently assessed Engineer Kelly 45 demerits and dismissed him for accumulation of demerits.

The Brotherhood appealed the discipline assessed Engineer Kelly requesting that the discipline assessed be reduced and that he be reinstated into service.

The Company declined the Brotherhood's appeal.

FOR THE BROTHERHOOD:

(SGD) T. G. HUCKER
GENERAL CHAIRMAN
HHS

FOR THE COMPANY:

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

There appeared on behalf of the Company:

J. D. Huxtable – Assistant Supervisor, Labour Relations, Vancouver
B. P. Scott – Labour Relations Officer, Montreal
L. J. Guenther - Assistant Supervisor, Labour Relations, Vancouver

And on behalf of the Brotherhood:

T. G. Hucker – General Chairman, Calgary
D. C. Curtis – Vice-General Chairman, Calgary

AWARD OF THE ARBITRATOR

In the Arbitrator's view the Company has established that it had grounds for the imposition of discipline against the grievor for his failure to accept a call, in consequence of which it was forced to cancel his train. I am not persuaded by the grievor's purported explanation that he overslept because of the mistaken ingestion of sleeping pills. The Arbitrator is, however, not persuaded that the grievor's prior record, particularly with respect to attendance problems, is as serious as the Company maintains. It seems that, apart from participation in one general political job action in June of 1987, the grievor was disciplined for his failure to be available in May of 1987 and in August of the same year, when he failed to report for duty after accepting a call, in circumstances not unlike those of the culminating incident giving rise to his discharge. While those incidents are not trivial, they do not, of themselves, prove a pattern of hopeless recidivism.

Mr. Kelly has been employed since 1973, and has had relatively little discipline since 1980, apart from the incidents cited above. In the Arbitrator's view, in the instant case a lengthy suspension in substitution of his discharge should serve the legitimate, rehabilitative interests of the Company. The Arbitrator therefore orders that the grievor be reinstated, without compensation and without loss of seniority, with his disciplinary record to stand at forty demerits. The grievor must appreciate that any further discipline with respect to his attendance or availability for work may have the most serious of consequences.

The Arbitrator retains jurisdiction in this matter.

July 14, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR