

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2353

Heard at Montreal, Tuesday, 13 April 1993

concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The assessment of 20 demerit marks, once on April 18, 1990, and twice on May 18, 1990, to Mr. J. Coda, resulting in a total assessment of 60 demerits.

JOINT STATEMENT OF ISSUE:

On March 19, April 20 and April 23, 1990, the grievor failed to appear at investigations scheduled by the Company. On April 18, 1990, Mr. Coda's record was debited with 20 demerit marks for "... failing to appear for a properly scheduled investigation, and for failing to take appropriate action to advise the investigating officer that you would not appear for the investigation at the appropriate time and date, Thunder Bay, Ontario, March 19, 1990."

Mr. Coda's record was further debited on May 18, 1990, with 20 demerit marks for "failing to appear for a properly scheduled investigation and for failing to advise the investigating officer sufficiently in advance that you would not appear for investigation at the appointed time and date, Thunder Bay, Ontario, April 20, 1990." Also that day, Mr. Coda's record was debited with an additional 20 demerit marks for "... failing to appear for a properly scheduled investigation and for failing to take appropriate action to advise the investigating officer that you would not appear for investigation at the appointed time and date, Thunder Bay, Ontario, April 23, 1990."

The Brotherhood contends that: **1)** The grievor failed to appear at the scheduled investigations for valid medical reasons. **2)** The grievor advised the appropriate Company officers in advance of the possibility that, because of pain, he might be unable to attend the investigations. **3)** The assessment of 20 demerit marks for each of the incidents here under consideration was far too severe and unwarranted in the circumstances.

The Brotherhood requests that the three 20 demerit mark assessments issued on April 18, 1990 and May 18, 1990 be removed from the grievor's record and that he be reinstated forthwith without loss of seniority and with complete reimbursement for any and all wages, expenses and benefits lost as a result of this matter.

The Company denies the Brotherhood's contentions and has declined the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) J. J. KRUK
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) F. J. GREEN
GENERAL MANAGER, OPERATIONS & MAINTENANCE

There appeared on behalf of the Company:

M. E. Keiran	- Manager, Labour Relations, Vancouver
R. M. Smith	- Counsel, Montreal
D. T. Cooke	- Labour Relations Officer, Montreal
R. H. Strelesky	- Division Engineer, Gateway Division
R. M. Forsberg	- Assistant Superintendent, Vancouver Division
O. R. Jones	- Claims Agent, Winnipeg

And on behalf of the Brotherhood:

D. Brown	- Senior Counsel, Ottawa
P. Davidson	- Counsel, Ottawa
G. D. Housch	- National Vice-President, Ottawa
D. McCracken	- Federation General Chairman, Toronto

AWARD OF THE ARBITRATOR

The grievor was assessed twenty demerits on each of three occasions for having missed disciplinary investigations: March 19, April 20 and April 23, 1990. The facts in the case at hand are substantially similar to those disclosed in **CROA 1423**, particularly as regards the investigations of April 20 and 23, which concerned the grievor's refusal to sign the transcript of an earlier investigation. In that case, for similar conduct, the Company had assessed fifteen demerits for the failure to attend the investigation concerning the refusal to sign, which was subsequently reduced by the Arbitrator to five demerits.

As noted in **CROA 2352**, which concerns related events, each case must be assessed on its own particular facts. Clearly, the grievor was under an obligation to attend each of the investigations, and failed to do so without valid excuse. He therefore became liable to discipline, in each case arguably more serious in light of the reminders and warnings communicated to him by the Company. While I am satisfied that the Company's officers overreacted, I am also satisfied that the grievor's conduct was sufficiently provocative as to justifiably characterize him as a major contributor to his own misfortune. In the circumstances, while I am satisfied that a reduction of the demerits assessed is appropriate, and that reinstatement is justified, I do not deem this an appropriate case for compensation.

In the result, the Arbitrator substitutes an assessments of a total of twenty-five demerits for the three incidents in question. The grievor shall therefore be reinstated into his employment, without compensation and without loss of seniority, with his disciplinary record to stand at fifty demerits.

April 16, 1993

(SGD.) MICHEL G. PICHER
ARBITRATOR