

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2409

Heard at Montreal, Thursday, 14 October 1993

concerning

CANADIAN PACIFIC LIMITED

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION - CANADA]**

DISPUTE:

Dismissal of Conductor E.M. Lapointe, Kenora, Ontario.

JOINT STATEMENT OF ISSUE:

Conductor Lapointe arrived in Kenora on Train Extra 5847 East, June 22, 1992 at 1138. As a part of his normal duties, he was required to perform an outbound inspection of that train for the Ignace subdivision crew relieving him. Such inspection commenced at 1150 and concluded at approximately 1200.

Conductor Lapointe then proceeded to complete some paper work and perform other functions that were not connected to the trip just completed and, therefore, not compensable under the provisions of the collective agreement.

Conductor Lapointe did not exclude the time used in performing these non trip related functions from the time claimed for his trip and, in fact, continued to show both his crew member, who had departed shortly after 1200, and himself on pay until 1240.

The Company investigated his actions and as a result, Conductor Lapointe was dismissed on August 20, 1992, for deliberately and knowingly submitting a fraudulent wage claim and falsifying other documents for his tour of duty in order to improperly enhance his earnings.

The Union appealed the dismissal on the basis that it was too severe under the circumstances and requested that the grievor be reinstated without loss of seniority or benefits and with full compensation for all time lost.

The Company refused to reinstate Conductor Lapointe.

FOR THE UNION:

(SGD.) L. O. SCHILLACI
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. WHITE
for: GENERAL MANAGER, OPERATIONS & MAINTENANCE, HHC

There appeared on behalf of the Company:

R. E. Wilson - Labour Relations Officer, Vancouver
R. N. Hunt - Labour Relations Officer, Montreal
G. Chehowy - Labour Relations Officer, Montreal

And on behalf of the Union:

L. O. Schillaci - General Chairperson, Calgary
R. M. Smith - Local Chairperson, Kenora
D. A. Warren - General Chairperson, Toronto
B. MacLeod - Local Chairperson, Chapleau

AWARD OF THE ARBITRATOR

The material before the Arbitrator casts doubt on the allegation of the Company that the grievor's time claim represents a knowing and deliberate attempt to defraud the employer. During the course of the disciplinary investigation Mr. Lapointe explained that after putting on his work boots and using the washroom he proceeded to fill out his trip tickets for the tour of duty that he was completing, and also filled out the tickets for an earlier tour of duty as well as his annual vacation tickets and general holiday tickets for the July 1 holiday, as this was the final tour of duty before his annual vacation. While the Union does not dispute that the time expended in relation to the earlier tour of duty, the annual vacation tickets and the general holiday ticket should not have been claimed, its representative stresses that the grievor was not clearly aware of that fact. The Union's representative submits that general practice in the Kenora area had, in the past, allowed a certain latitude in the submission of time claims for final terminal time which would tend to support the view expressed by Mr. Lapointe.

In support of that position, the Union placed in evidence the statements of four retired long-service employees. Each of them confirms that it was a common practice, on the Lakehead Division, for conductors to prepare and submit their annual vacation and holiday tickets while on duty at the termination of their final trip in a given pay period. While one of the declarants suggests that the practice may not have been "with the Company or Union blessing," another indicates that on at least one occasion he was directed to proceed in that fashion by a terminal supervisor.

On the whole, the Arbitrator is left in substantial doubt as to the state of mind of Mr. Lapointe, insofar as the intention of fraud is concerned. On balance, I am satisfied that his statement to the effect that he believed that his actions were in keeping with accepted practice is made honestly and in good faith. That conclusion does not, however, detract from the seriousness of the error of judgment committed by Mr. Lapointe. His willingness to follow what was at best a doubtful practice, without seeking clarification from the appropriate authorities, constituted a serious violation of his obligation to the Company.

In all of the circumstances the Arbitrator is satisfied that a measure of discipline short of discharge may be substituted. The Arbitrator therefore directs that Conductor Lapointe be reinstated into his employment, without compensation or benefits, and without loss of seniority.

October 15, 1993

(sgd.) MICHEL G. PICHER
ARBITRATOR