

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2412

Heard in Montreal, Wednesday, 10 November 1993

concerning

CANADIAN PACIFIC LIMITED

and

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

EX PARTE

DISPUTE:

Dismissal of Trainperson A.S. Hunter, Moose Jaw, Saskatchewan.

UNION'S STATEMENT OF ISSUE:

Trainperson Hunter applied for, and obtained, a leave of absence from the Corporation from August 23, 1990 until November 11, 1990.

On March 7, 1991, the Corporation received an anonymous letter from "an interested employee", stating that Trainperson Hunter had been working on the pipeline during his leave of absence.

On May 2, 1991 Trainperson Hunter was dismissed from CP Rail for:

"... breach of trust; dishonest and untrustworthy conduct as evidenced by you willfully misrepresenting your personal circumstances to obtain a leave of absence on compassionate grounds and then engaging in alternate employment from August 24 to October 31, 1990, in violation of Article 29(b) of the Collective Agreement; and for providing false and misleading information during the formal investigation conducted on April 2, 1991, Moose Jaw, Saskatchewan."

The Union has appealed the dismissal of Trainperson Hunter to the Corporation and has requested reinstatement without loss of seniority and for lost wages for all time lost.

The Corporation has declined to accede to the Union's request.

FOR THE UNION :

(SGD.) L. O. SCHILLACI
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

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

And on behalf of the Union :

- L. O. Schillaci – General Chairperson, Calgary
- B. McLafferty – Vice-General Chairperson, Moose Jaw
- T. G. Hucker – Vice-President, Brotherhood of Locomotive Engineers, Ottawa
- D. A. Warren – General Chairperson, UTU, Toronto
- R. S. McKenna – General Chairman, BLE, Ottawa
- A. S. Hunter – Grievor

AWARD OF THE ARBITRATOR

The undisputed evidence discloses that Trainperson Hunter knowingly deceived the Company by requesting a leave of absence, allegedly to travel to British Columbia with his wife for her health, between August 23, 1990 and November 11, 1990. In fact, Mr. Hunter commenced working for a pipeline company on August 24, through the end of October, 1990 as was his intention from the outset.

The Arbitrator is inclined to agree with the representations of the Union to the effect that the grievor's initial denials of fraud and falsehood during the course of the Company's disciplinary investigation should not be viewed as a second or separate infraction. In essence, Mr. Hunter was simply attempting to extend the same deception which he had commenced with his initial request for the leave of absence. That said, however, the gravity of his offence remains. On the whole, the Arbitrator cannot disregard the submission of the Company that Mr. Hunter's actions involved a substantial breach of trust, such as to undermine the viability of his ongoing employment. The grievor is not a long service employee, having entered the Company's service in April of 1985, nor can he lay claim a distinguished disciplinary record. On the whole, the Arbitrator can see no substantial mitigating factors which would justify a reduction of the penalty assessed.

For the foregoing reasons the grievance must be dismissed.

12 November 1993

(Sgd.) MICHEL G. PICHER
ARBITRATOR