

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2484

Heard in Calgary, Tuesday, 14 June 1994

concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Dismissal of Leading Track Maintainer S. Kambho.

EX PARTE STATEMENT OF ISSUE

Between December of 1992 and February of 1993 the grievor charged a number of personal long distance telephone calls to the Company. For this he was dismissed on May 21, 1993.

The Brotherhood contends that the discipline assessed to the grievor was excessive and unwarranted in the circumstances.

The Brotherhood requests that the grievor be reinstated without loss of seniority and with full compensation for all benefits and wages lost as a result of this matter.

The Company denies the Brotherhood's contentions and declines its requests.

The grievor had twelve years of service with the Company and possessed no discipline at the time of dismissal.

FOR THE BROTHERHOOD:

(SGD.) D. McCRACKEN

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. M. Andrews – Labour Relations Officer, Vancouver
D. T. Cooke – Manager, Labour Relations, Montreal

And on behalf of the Brotherhood:

P. Davidson – Counsel, Ottawa
D. McCracken – System Federation General Chairman, Ottawa
D. Brown – Senior Counsel, Ottawa
K. Deptuck – National Vice-President, Ottawa
Wm. Brehl – General Chairman, Vancouver
S. Khambo – Grievor

AWARD OF THE ARBITRATOR

The evidence discloses that the grievor made several long distance calls of a personal nature which he charged to the Company. The total value of the calls was slightly in excess of \$3.00. The evidence before the Arbitrator does not establish that a clear rule was communicated to Mr. Khambo in respect of not making such calls, although it would appear that Track Maintenance Foreman M. Garcia may have made general comments to employees about not using the telephone.

In the circumstances, having regard to the principles related in **CROA 2482** the Arbitrator determines that this is an appropriate case for a substitution of penalty. Given the Company's prior treatment of similar cases by the imposition of demerits, it would seem to the Arbitrator a change of policy invoking discharge for the same conduct should, at a minimum, involve a clear and unequivocal communication of the rule and the consequences of its breach to the employees concerned. In the result, the Arbitrator directs that the grievor be reinstated into his employment, without compensation for wages and benefits lost and without loss of seniority.

June 22, 1994

(Sgd.) MICHEL G. PICHER
ARBITRATOR