

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2486

Heard in Calgary, Tuesday, 14 June 1994

concerning

**CANADIAN PACIFIC LIMITED**

and

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**EX PARTE**

### **DISPUTE:**

Dismissal of Track Maintainer R.S. Gill.

### **EX PARTE STATEMENT OF ISSUE**

Between November of 1992 and February 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  
R. S. Gill – Grievor

### **AWARD OF THE ARBITRATOR**

The evidence suggests that the grievor was generally aware that he was not to charge personal long distance calls to the Company's telephones, and that he nevertheless did so. However the material before the Arbitrator suggests that there was some degree of laxity in the enforcement of the rule. Unfortunately, during the course of the disciplinary investigation, Mr. Gill did not disclose that he had been spoken to previously by Track Maintenance Foreman Garcia about the use of telephones, a position he later recanted in light of a statement made to the Company by Mr. Garcia. On the whole, the Arbitrator is not persuaded that Mr. Gill's statement at the first investigation interview, made in an attempt to obviously minimize the gravity of his actions, should be viewed as placing him beyond rehabilitation. The Arbitrator accepts that Mr. Gill did not believe that it was a serious offence to make use of the Company's telephones for personal long distance calls, and that the calls which he made, approximating \$30.00 in value, would not be such as to attract serious discipline. In light of the prior treatment of the same offence by the Company by the assessment of demerits (see **CROA 1650, 2482**) it would not have been, I think, unreasonable for an employee to operate under the belief which was expressed by Mr. Gill.

In the result, the Arbitrator is satisfied that a reduction of penalty is appropriate in the case at hand. I am not persuaded that Mr. Gill is beyond rehabilitation in respect of understanding the importance of observing the Company's policy with respect to long distance telephone calls. Nor am I persuaded, in all of the circumstances, that the bond of trust between himself and his employer should be seen as having been irreparably ruptured by the actions giving rise to his discipline. The Arbitrator therefore 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**