

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2542

Heard in Montreal, Thursday, 10 November 1994

concerning

CANADIAN PACIFIC LIMITED

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

Dismissal of Trainperson J.G. Staples, Moose Jaw, Saskatchewan.

JOINT STATEMENT OF ISSUE:

On September 30, 1993, Trainperson Staples was investigated for: "Not reporting for duty after accepting a proper call for the Moose Jaw Wayfreight at 0700 September 15, 1993, failing to be available for duty when properly called for Extra West (357) at 1915 September 15, 1993 and your attendance record in the previous thirteen months."

On October 16, 1993, Trainperson Staples was assessed forty (40) demerit marks for: "Not reporting for duty after accepting a proper call for the Moose Jaw Wayfreight September 15, 1993 at 0700 resulting in unnecessary delay to train operations and additional expense to the Company, and for your failure to be available for duty resulting in a missed call for Train 357 September 15, 1993 at 2115 in the Moose Jaw Terminal (fourth offence)."

On this same date, Trainperson Staples was also advised that "... you have been DISMISSED from the service of the Company for an accumulation of demerit marks under the Brown System of Discipline ...". Mr. Staples' discipline stood at 40 demerit marks at the time of this incident.

The Union has appealed the dismissal requesting that the Company reinstate Trainperson Staples without loss of seniority and with compensation for all time lost by utilization of deferred or reduced discipline.

The Company has declined the Union's request.

FOR THE UNION :

(SGD.) L. O. SCHILLACI
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) M. E. KEIRAN
FOR: GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

M. E. Keiran – Manager, Labour Relations, Vancouver
R. M. Forsberg – Manager, Operations, Vancouver
G. Chehowy – Labour Relations Officer, Montreal

And on behalf of the Council:

B. McLafferty – Vice-General Chairperson, CCROU(UTU), Moose jaw
L. O. Schillaci – General Chairperson, CCROU(UTU), Calgary
J. G. Staples – Grievor

AWARD OF THE ARBITRATOR

The grievor in the case at hand is of limited seniority, having been in the service of the Company for seven years. The record before the Arbitrator discloses that his failure to respond to calls or to be available for duty was the subject of repeated forms of discipline and written warnings over the course of his employment. On three occasions he was notified by letter of his failure to respond to calls, he was once assessed a caution and was subsequently assessed ten demerits and twenty demerits for his failure to be available. With that background, the two unfortunate incidents of September 15, 1993 occurred. At 0525 the grievor was called at his home for service on the Moose Jaw Wayfreight for 0700. A transcript of the conversation between Mr. Staples and the crew dispatcher confirms that he registered undisguised unhappiness at being assigned to the Wayfreight, as it would involve his being away until the next day. When Mr. Staples did not appear for work at the appointed time another employee was called and the train was delayed nearly two hours. Later the same day Mr. Staples was called at 1915 for service on Train 357, but was not available to take the call.

On the whole of the material before me, I cannot reject the submission of the Company that the grievor's record, and the events of September 15, 1993, reflect an unfortunate pattern of recidivism, notwithstanding the Company's efforts at progressive discipline. Having regard to the relatively short service of Mr. Staples, and the absence of any significant mitigating factors, the Arbitrator cannot conclude that this is an appropriate case for a substitution of penalty. For the foregoing reasons the grievance must be dismissed.

11 November 1994

(signed) MICHEL G. PICHER
ARBITRATOR