

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2566

Heard in Montreal, Thursday, 15 December 1994

concerning

**CANADIAN PACIFIC LIMITED**

and

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

### **DISPUTE:**

The closure of the record of Trainperson C.L. Sandyke, Kamloops.

### **JOINT STATEMENT OF ISSUE:**

In April of 1992, Trainperson Sandyke was laid off from CP Rail. His layoff was resultant from a reduction of staff.

On or about April 2, 1992, the Corporation recalled laid off employees and this recall was, for the most part, done by telephone.

On April 14, 1992, Supervisor of Operations, Mr. D.G. Werezak, wrote a letter to Trainperson Sandyke and sent it "Double Registered" by Canada Post. This letter was received by Trainperson Sandyke on April 21, 1992.

This letter was to inform Trainperson Sandyke that if he did not place himself available for duty by 1000, Monday, April 20, 1992, his file would be closed. Subsequently, Trainperson Sandyke was advised that CP Rail had closed his record.

The Union contends that the provisions of article 29, clause (e) have not been properly adhered to in this case and negates the possibility of the Corporation closing out the record of Trainperson Sandyke under the circumstances.

The Corporation is satisfied that Trainperson Sandyke was properly recalled and refused to return to duty as required. Accordingly, they closed his record in accordance with the collective agreement and have denied the grievance.

### **FOR THE UNION:**

**(SGD.) L. O. SCHILLACI**  
**GENERAL CHAIRPERSON**

### **FOR THE COMPANY:**

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

There appeared on behalf of the Company:

M. E. Keiran	– Manager, Labour Relations, Vancouver
R. N. Hunt	– Labour Relations Officer, Montreal
R. A. Geoffrey	– Manager, Operations, Manitoba Division
R. M. Smith	– Labour Relations Officer, Montreal

And on behalf of the Union:

L. O. Schillaci	– General Chairperson, Calgary
D. A. Warren	– General Chairperson, Toronto
D. Finnsen	– Secretary, GCA, Saskatoon

T. G. Hucker	– Vice-President & National Legislative Representative, BofLE, Ottawa
R. S. McKenna	– General Chairman, BofLE, Ottawa
Wm. Foster	– Vice-General Chairman, BofLE, London
J. Flegel	– Vice-General Chairman, BofLE, Saskatoon

### **AWARD OF THE ARBITRATOR**

Upon the basis of the material filed, the Arbitrator is satisfied that Mr. Sandyke had actual notice of his recall by reason of a telephone call made to him on or about April 3, 1992. He was then spoken to by Senior Crew Clerk D.H. Wilson, who notified him that he was required immediately for service and was required to book on. He declined, explaining that he was just commencing employment with a new employer effective April 6, 1992. Subsequently, a written notice was mailed to Mr. Sandyke, in conformity with article 29(e) of the collective agreement which provides as follows:

(e) Employees who have been laid off due to reduction of staff will receive 15 days' notice by registered mail when being recalled for service, provided other employees are available. Otherwise they will return to actual service when recalled.

Employees who do not return to actual service within 15 days of the date of the notice will be considered to have resigned and their records closed accordingly except that in exceptional circumstances, local arrangements may be made between the General Manager and the General Chairman to extend the 15 day period.

There is some dispute as to whether Mr. Sandyke responded in a timely fashion to the written notice which was sent to him by registered mail. It is common ground that Mr. Sandyke received the notice on April 21, 1992. The Union submits that in fact he called two separate crew clerks, one of whom is his father, on April 29, 1992, the last day of the fifteen day limit based on the date of the letter sent to him, to report for work, but was advised that he was again on laid off status.

The Arbitrator has substantial difficulty with the credibility of the account put forward on behalf of the grievor by the Union. Firstly, as noted above, I am satisfied that Mr. Sandyke verbally declined to return to work when requested to do so by telephone on April 3, 1992. At a time when he knew, or reasonably should have known, that employees junior to himself were being recalled to service, he made no attempt to contact the Company or indicate his availability. Indeed, it was not until some months later, when the issue of the payment of severance packages under the newly negotiated Conductor Only Agreement became known that Mr. Sandyke contacted the Company to inquire and ultimately grieve about his status. I am satisfied, on the balance of probabilities, that Mr. Sandyke did not report for work as the Union alleges, and that the Company was correct in its treatment of him as a probationary employee who declined to respond to a recall to work, and was therefore subject to having his record closed in conformity with article 29(e) of the collective agreement.

For the foregoing reasons the grievance must be dismissed.

16 December 1994

**(signed) MICHEL G. PICHER**  
ARBITRATOR