

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2722

Heard in Montreal, Thursday, 11 April 1996

concerning

CANADIAN PACIFIC LIMITED

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Time held out of service pending conclusion of investigation and discipline of 40 demerit marks assessed Assistant Chief Clerk J.C. Quinn, Medicine Hat, for conduct unbecoming an employee.

JOINT STATEMENT OF ISSUE:

On December 16, 1994, Mr. Quinn was advised by Manager of Operations, G.E. Johnson, that he was being held out of service pending an investigation. On December 22, 1994, an investigation was scheduled with Mr. Quinn in connection with "letters received dated December 13th and December 14th alleging that you accepted bottles of liquor from taxi drivers for trips." A supplementary statement was also conducted on December 22, 1994.

Mr. Quinn was returned to service on December 23, 1994.

On January 6, 1995, Mr. Quinn's discipline record was assessed 40 demerit marks for his "conduct unbecoming an employee as evidenced by your acceptance of gratuities while in a position of trust and responsibility, using your employment status to obtain personal gain from those doing or seeking to do business with the railway and dealing with an outside party in a manner that compromised the integrity of the Company at Medicine Hat, Alberta."

The Union progressed a grievance claiming that the discipline issued Mr. Quinn is excessive and unfair. The Union is further requesting that Mr. Quinn be compensated for any loss of wages as a result of being held out of service pending investigation.

The Company has declined the grievance.

FOR THE UNION:

(SGD.) D. J. KENT
DIVISIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) C. GRAHAM
FOR: GENERAL MANAGER, OPERATIONS & MAINTENANCE

There appeared on behalf of the Company:

C. M. Graham – Labour Relations Officer, Montreal
S. Moutino – Labour Relations Officer, Montreal
M. Hallam – Employee Relations Officer, Montreal

And on behalf of the Union:

N. LaPointe – Assistant Division Vice-President, Montreal
R. Pagé – Executive Vice-President, Montreal
M. Prebinski – Director, Education, Ottawa
P. J. Conlon – Assistant Divisional Vice-President, Toronto

AWARD OF THE ARBITRATOR

The record discloses that the grievor worked for the Company for forty-three years, having commenced his employment on May 5, 1952 as a Call Boy. During all of those years he never once received any discipline. Since the events giving rise to this grievance he has duly retired.

In the latter part of 1994 Mr. Quinn held the position of Assistant Chief Clerk at Medicine Hat. His duties and responsibilities included calling taxis for deadheading by train crews. The record discloses, beyond controversy, that the owner of a small independent taxi company gave the grievor gifts of a single bottle of liquor on two separate occasions. There is no suggestion that the grievor solicited the gifts, or that in fact he directed extra business toward the taxi company in question. Indeed, it appears that the gifts of liquor were disclosed to the Company in a letter of complaint from the taxi owner's wife, who was disturbed by the decline in business from the Company which her husband had experienced.

The grievor relates that he did not feel it improper to receive a gift from the taxi owner in question, a person with whom he had had a friendship for some twenty-five years. Further, there is no evidence whatsoever to confirm the allegation contained in the taxi driver's wife's letter to the effect that there was an on-going practice whereby Mr. Quinn regularly demanded and received gifts of liquor as a kick-back for taxi contracts. Quite to the contrary, the documentary evidence includes statements from other taxi carriers denying knowledge of any such alleged practice. The grievor does not deny, however, that he did receive various types of gifts over the years from people with whom he did business. It is not suggested that there is any wrongdoing in that, nor was it the basis for the discipline assessed against him.

The Arbitrator is satisfied that the evidence falls well short of establishing that Mr. Quinn actively solicited bribes or kick-backs from taxi operators. At most, the evidence discloses that on two occasions he was given a single bottle of liquor by a cab service owner with whom he did business and who was also his friend. The Arbitrator must agree with the Company that to accept the gifts in those circumstances was incorrect, and reflects a clear error of judgement by Mr. Quinn. The question of substance is the appropriate measure of discipline for such an error.

In the Arbitrator's view there are substantial mitigating factors to be considered in this case. In forty-three years of exemplary service with the Company Mr. Quinn has never been disciplined. The allegations made in the letter sent by the taxi operator's spouse are obviously inflammatory. However, they are not made out on the evidence. What is revealed would appear to be an isolated incident. Most importantly, it appears clear that the grievor did not himself solicit gifts or favours.

I am satisfied that the discipline assessed to the grievor is excessive, in the circumstances. In my view, in light of the exemplary prior record of Mr. Quinn, there is every reason to believe that a letter of reprimand would have sufficed to remind him of the importance of not receiving gifts from people with whom he does business, even though they may be long-time friends. This was not, however, a case which justified holding an employee of the grievor's quality out of service, or the assessment of a substantial measure of demerits.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that all demerits assessed against the grievor be removed from his record, and that letter of reprimand be substituted. The grievor shall, moreover, be compensated for the wages and benefits lost for the period he was held out of service.

April 12, 1996

(signed) MICHEL G. PICHER
ARBITRATOR