

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2775

Heard in Montreal, Tuesday, 8 October 1996

concerning

**CANADIAN PACIFIC LIMITED
(ST. LAWRENCE & HUDSON RAILWAY COMPANY)**

and

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

EX PARTE

DISPUTE:

Appeal of the discipline (20 demerits) assessed to the record of Mr. K. Williams on January 24, 1995.

COUNCIL'S STATEMENT OF ISSUE:

Mr. K. Williams entered into employment with CP Rail on February 28, 1994 as a yardman/trainman trainee and successfully completed the trainman/yardman training course and commenced active service. His record was clear of discipline to September of 1994.

From September to November of 1994, his discipline record was assessed with 55 demerit marks for "absenteeism" and a run-through switch. On December 7, 1994, his discipline record was assessed with 20 demerits concerning a run-through switch.

On January 24, 1995, his record was assessed with 40 demerits for unavailability for duty. He was subsequently discharged from Company service for accumulation of demerits.

The Union appealed the 40 demerits for unavailability and the 20 demerits for the run-through switch, and the resulting dismissal.

The Union also states that the investigation was not fair and impartial and that Mr. Williams was not fully afforded his rights as per the collective agreement.

The Union requested that Mr. Williams be reinstated into Company service with compensation for loss of wages and without loss of seniority, service or benefits.

The Company has declined the Council's request.

FOR THE COUNCIL:

(SGD.) D. A. WARREN
GENERAL CHAIRMAN

There appeared on behalf of the Company:

H. B. Butterworth	– Labour Relations Officer, Toronto
H. Morrison	– Manager, Yard Operations, Montreal
G. DeCiccio	– Road Manager, Montreal
P. Chappell	– Manager, Service Planning, Toronto

And on behalf of the Council:

P. Sadik	– Counsel, Montreal
D. A. Warren	– General Chairman, Toronto
K. Williams	– Grievor

AWARD OF THE ARBITRATOR

The record before the Arbitrator discloses that the grievor, Mr. K. Williams, registered a pattern of lateness and absenteeism, over a period of months, which is plainly inconsistent with his obligations of ongoing employment. In explanation of his lamentable timekeeping the grievor raises a number of factors, including his lack of a car and telephone. In the Arbitrator's view, those explanations speak more to the grievor's apparent unwillingness or inability to order his priorities so as to be able to respond in a responsible fashion to his obligations towards the Company than to valid mitigating factors. The record discloses four prior incidents of discipline against Mr. Williams for absenteeism and lateness. Even if the Arbitrator should discount the discipline of December 8, 1994, which resulted in twenty demerits, because the penalty was communicated to him on the day following the events of December 7, 1994, for which he was assessed a further forty demerits on January 24, he was nevertheless on clear and repeated notice that his employment was in jeopardy if he did not correct his chronic inability to be in faithful and timely attendance at work.

It should also be stressed that prior to the incidents giving rise to his discharge the grievor's record stood at fifty-five demerits. There is no doubt that Mr. Williams was primarily responsible for the run-through switch which occurred at a level crossing on the One-West Loop/CNR Interchange on November 30, 1994. Unfortunately, the grievor's record discloses the assessment of twenty demerits for a similar infraction assessed on September 6, 1994.

To put it simply, Mr. Williams amassed a remarkably negative disciplinary record within his relatively short period of employment of less than one year. While the Council seeks his reinstatement on compassionate grounds, there are no compelling mitigating factors advanced which would support such an approach. Neither long service nor good prior performance can be advanced in support of Mr. Williams' grievance. While it may be that he was no longer a probationary employee at the time of his discharge, a board of arbitration must nevertheless respect the concerns of an employer which is faced with so negative a record of both job performance and attendance at work in the very first months of an employee's service. Regrettably, I must conclude that this is not a case for the substitution of penalty, largely by reason of the grievor's limited service. Mr. Williams has demonstrated that he is not capable of honouring the most fundamental obligation of his employment contract, which is to be at work when scheduled. He was also deserving of discipline for his carelessness in allowing, for a second time, the run-through of a switch, when his prior disciplinary record was already in a highly precarious state. For all of these reasons the grievance is dismissed.

October 11, 1996

(signed) MICHEL G. PICHER
ARBITRATOR