

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2987

Heard in Montreal, Wednesday, 14 October 1998

concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

and

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**EX PARTE**

### **DISPUTE:**

Dismissal of Mr. A. Allard.

### **BROTHERHOOD'S STATEMENT OF ISSUE:**

By way of letter dated March 16, 1998, the grievor was advised formally by the Company that his employment relationship with the Company was severed. The reason given for this was the grievor's alleged refusal to appear at an investigation hearing on February 12, 1998.

The Union contends that: 1.) Missing a single investigation hearing is not a dismissable offense in the rail industry; 2.) In any case, the discipline assessed was excessive and unwarranted in the circumstances.

The Union requests that the grievor be reinstated into Company service forthwith without loss of seniority and with full compensation for all financial losses incurred as a result of this matter.

The Company denies the Union's contentions and declines the Union's request.

### **FOR THE BROTHERHOOD:**

**(SGD.) J. J. KRUK**

**SYSTEM FEDERATION GENERAL CHAIRMAN**

There appeared on behalf of the Company:

D. Freeborn	– Labour Relations Officer, Calgary
E. MacIsaac	– Labour Relations Officer, Calgary
S. Rowe	– Track Programs & Equipment

And on behalf of the Brotherhood:

D. W. Brown	– Senior Counsel, Ottawa
J. J. Kruk	– System Federation General Chairman, Ottawa
P. Davidson	– Counsel, Ottawa
K. Deptuk	– Vice-President, Ottawa

## **AWARD OF THE ARBITRATOR**

The material before the Arbitrator establishes that the grievor was discharged for failing to attend a disciplinary investigation hearing on February 12, 1998. It is common ground that the investigation was in relation to absences of the grievor on July 2, 3, 5 and 9 as well as August 12, 1997. It appears that the grievor maintained that he suffered a back injury for which he was under a doctor's care. During the course of the disciplinary investigation, conducted over some three days in October and November of 1997, the grievor indicated that he had medical documentation available to substantiate his claim. Although he was provided adjournments to gather such documentation, including the adjournment to February 12, 1998, no such documentation was ever produced.

The Arbitrator can appreciate the impatience which the Company eventually felt with the grievor's failure to produce the documentation, and his failure to appear at the investigation scheduled for February 12, 1998. He also failed to appear at a prior investigation scheduled for November 20, 1997 without any prior advice or warning to the Company. However, substantial concerns remain with respect to the appropriate measure of discipline visited upon the grievor in the case at hand. It was, of course, open to the Company to close its investigation of the grievor's absenteeism, drawing such conclusions as it might from the material before it, and from the lack of any documentary material provided by the employee. Rather, the Company escalated the issue into a dismissable offence for the failure to appear at an investigation, a consequence which, as the Brotherhood submits, appears harsh, and out of keeping with industrial norms.

Within the railway industry discipline for the failure of an employee to attend a scheduled investigation is a matter which has on more than one occasion been considered by this Office. The Arbitrator has been made aware of no such incident which has been cause for an employee's discharge. In **CROA 1666** the assessment of twenty demerits was found to be within the appropriate range of discipline for such an infraction. A similar measure of demerits was assessed in an arguably more aggravated case in **CROA 1935**. Lesser discipline has also been imposed, including measures of five, ten and fifteen demerits (see **CROA 958, 1423, 1859** and **2009**). The only reported case of which the Arbitrator has been made aware where discharge resulted from the failure to attend a disciplinary investigation is **CROA 2353**, where twenty demerits were assessed for each of three consecutive incidents, with the employee ultimately being discharged for an accumulation of demerits. Even in that circumstance, however, this Office substituted a total of twenty-five demerits for the three incidents in question.

I find it difficult to rationalize the reported jurisprudence, and indeed the level of demerits chosen within the railway industry for the failure of an employee to attend a disciplinary investigation with the summary discharge of Mr. Allard in the case at hand. In the circumstances I am satisfied that the Company knew, or reasonably should have known, that the grievor's termination was an excessive measure of discipline. In the circumstances I am satisfied that it is appropriate to order a substitution of penalty, with compensation.

The Arbitrator therefore directs that the grievor be reinstated into his employment, without loss of seniority and with compensation for all wages and benefits lost, with twenty demerits to be registered against his record for his failure to attend the disciplinary investigation of February 12, 1998.

October 19, 1998

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