

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3079

Heard in Montreal, Tuesday, 11 January 2000

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

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

EX PARTE

DISPUTE:

The issue in dispute involves Mr. J.P. Paulaharju (Juhani) of Chapleau, Ontario who was notified on January 5, 1999, by notice of form 104, that he was dismissed from Company service.

EX PARTE STATEMENT OF ISSUE:

On January 5, 1999, Mr. Paulaharju received two (2) form 104s advising as follows:

Please be informed that your record has been debited with 30 demerit marks for failing to apply and ensure that sufficient hand brakes were properly applied resulting in standing equipment being left unattended and improperly secured at AT&L Lafrenierre Lumber, JE Martel Lumber and Chapleau Lumber; a violation of CROR Rule 106, GOI Section 14 Item 1.1 Circular 042 dated May 27, 1998, at Chapleau, Ontario, December 10, 1998 (THIRD OFFENCE).

By separate notice of a second form 104 Mr. Paulaharju was advised as follows:

Please be informed that you have been Dismissed from Company Service for the accumulation of demerit marks under the Brown System of Discipline , at Chapleau, Ontario.

The subject of this dispute involves the incident, which occurred on December 10, 1998. Mr. J.R. McKnight and Mr. R. Fortier conducted proficiency tests at three lumber mills in the Chapleau area. They were testing compliance with the provisions of CROR Rule 112 and GOI, Section 14.

On December 21, 1998 the Company conducted a formal investigation as prescribed by article 33 of the collective agreement. On January 5, 1999 discipline was issued to Mr. Paulaharju as noted above.

The Union maintains the Company failed to view his entire work record when they relied upon the doctrine of culminating incident to impose the disciplinary penalty of discharge. The incident leading up to John's dismissal can be solely attributed to a medical condition aggravated by personal problems. Evidence of this was disclosed too the Company at the time of the investigation and subsequently validated in medical reports.

In view of the above, the Union respectfully requests that Mr. Paulaharju be reinstated into Company service will full compensation for lost earnings and benefits.

The Company has declined the Union's request.

FOR THE COUNCIL:

(SGD.) D. A. WARREN
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

R. Smith – Labour Relations Officer, Calgary
S. Seeney – Manager, Labour Relations, Calgary
S. Bell – Manager, Road Operations

And on behalf of the Council:

D. A. Warren – General Chairperson, Toronto
R. Saarinen – Local Chairperson
D. Genereux – Vice-General Chairperson
K. A. Lane – Legislative Representative
J. P. Paulaharju – Grievor

AWARD OF THE ARBITRATOR

It is not disputed that Mr. Paulaharju was liable to discipline for failing to properly apply sufficient handbrakes in the circumstances leading to the notices delivered to him on January 5, 1999. It is also not denied that he had received previous discipline for a similar infraction, and his disciplinary record stood at fifty-five demerits prior to the assessment of thirty demerits, which resulted in his discharge. The sole issue in these proceedings is whether there are mitigating circumstances which would justify a reduction of penalty.

After close consideration of the material filed, the Arbitrator is satisfied that this is a case for fashioning a last chance alternative. The grievor is not a long service employee, having approximately ten years' service. The record discloses, however, that in the initial years of his employment Mr. Paulaharju was close to an exemplary employee. Hired in August of 1988 he had received only a single caution for his failure to be available for work, until June of 1997. On June 14, 1997 he was involved in an incident which included a cardinal rules infraction in the movement of his train, resulting in forty-five demerits. His disciplinary problems were compounded in July of 1998 when he received twenty demerits for failing to properly secure a diesel engine on June 1, 1998 and in November of 1998 when he received a further ten demerits for an earlier incident which involved the failure to apply sufficient handbrakes to a cut of seventeen rail cars.

The record before the Arbitrator indicates a clear correspondence in time between the events for which the grievor was disciplined and documented personal stress and anxiety which he suffered, and for which he received professional treatment, prompted by the disintegration of his marriage. The record reveals that Mr. Paulaharju sought professional help as early as June 12, 1997 when, by his own initiative he enlisted the services of clinical psychologist Dr. Ellis Quarshie of Chapeau Health Services. A letter from the clinical psychologist confirms that the grievor suffered depression, anxiety, sleep deprivation and difficulty in concentration and job performance related to emotional problems caused by marital difficulties with his common law wife, which difficulties continued through 1997 and 1998. The documentation reveals that those problems have ultimately been resolved. Both the opinion of Clinical Psychologist Quarshie and the report of a psychiatrist, Dr. Joseph E. Blustein, confirm that the grievor has overcome his problems of depression and anxiety, and is fit to return to work.

In the circumstances the Arbitrator is satisfied that the interests of the Company can be adequately protected by a return to work of the grievor, subject to certain conditions. In coming to that conclusion I am satisfied that the grievor did suffer from a documented psychological disability for which he should be allowed a degree of accommodation, in keeping with principles mandated by the **Canadian Human Rights Act**. The Arbitrator therefore directs that the grievor be reinstated into his employment, with his disciplinary record to stand at fifty-five demerits, and with the period from the time of his discharge to his reinstatement to be registered as a suspension. In the discretion of the Company the grievor may be demoted and restricted to the position of brakeperson or yard helper for the period of one year following his reinstatement, to allow for a period of reasonable reorientation and monitoring of his work.

January 14, 2000

(signed) MICHEL G. PICHER
ARBITRATOR