

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4225

Heard in Montreal, July 11, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY DIVISION

DISPUTE:

Dismissal of B&B Foreman W. Boileau.

JOINT STATEMENT OF ISSUE:

The grievor, B&B Foreman W. Boileau, was dismissed by the Company "for fraudulently inputting time for overtime in which you were not entitled for June 20, 2012 for yourself and a fellow employee". A grievance was filed.

The Union contends that the grievor, who worked until 20:00 on June 20, 2012, mistakenly claimed overtime for the mealtime that evening. The grievor began work for the Company in 1995 and had no history of fraudulent activity or problems with time sheets. The decision to dismiss the grievor was unfair and unwarranted in the circumstances. The Union requests that the grievor be reinstated into Company service immediately without loss of seniority and with compensation for all financial losses incurred.

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

FOR THE UNION:
(SGD.) W. Brehl
President

FOR THE COMPANY:
(SGD.) M. Moran
Manager Labour Relations

There appeared on behalf of the Company:

W. Scheuerman – Labour Relations Officer, Calgary

There appeared on behalf of the Union:

W. Brehl – President, Ottawa
D. Brown – Counsel, Ottawa
R. Marshall – Assistant to President, Maple Ridge

AWARD OF THE ARBITRATOR

The evidence discloses that on or about June 20, 2012 the grievor submitted an extra 1.5 hours of overtime for himself and his workmate, although in fact they did not work those hours, and were involved in eating dinner and returning to their hotel. The Company viewed the grievor's actions as an attempted fraud which severed the bond of trust between himself and his employer, leading to his termination. It appears that two members of the four person crew decided to work three hours of overtime. However, while he and his workmate did not do so, the grievor entered time claims for all four employees claiming three hours of overtime when he and his workmate had in fact only worked 1.5 hours of overtime.

The issue in this grievance is whether the grievor acted in a deliberate and calculated way to claim overtime to which he was not entitled or whether, as the Union submits, he was simply careless in filling out the time sheets for June 20, 2012. Upon a close examination of the evidence I am inclined to accept the Union's submission that there was no deliberate intent to defraud on the part of Mr. Boileau. There is no prior record of any such incident in his previous eighteen years of service, and while his disciplinary status was precarious at the time of this incident, nothing on his record involved acts of dishonesty. I am satisfied that what the instant case discloses is an isolated lapse in judgement on the part of the grievor, and not a deliberate attempt at theft.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without compensation for any wages and benefits lost. Mr. Boileau must appreciate that any future incident involving a questionable time claim may have the most serious of consequences.

July 12, 2013

MICHEL G. PICHER
ARBITRATOR