

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.77

Heard at Montreal, Monday, September 11th, 1967

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (ATLANTIC REGION)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim for removal of discipline assessed with compensation for time lost of 13 extra gang laborers Montreal Terminals, May 1964.

JOINT STATEMENT OF ISSUE:

On May 8th, 1964, 13 extra gang laborers working under Extra Gang Foreman Usypchuk, Montreal Terminals were instructed to work one additional hour that day and nine hours May 9th (the sixth day) in accordance with Section 2, Clause (d) of Wage Agreement No. 13. The men refused to work and were held out of service and subsequently assessed 40 demerit marks. The Brotherhood claimed a fair and impartial hearing was not held on request of five of the employees involved as provided for under Section 9, Wage Agreement No. 13 and on this basis requested cancellation of discipline and payment for all time held out of service. The Company maintain that the hearing held on May 12th as well as subsequent hearings met this provision and declined the claim.

FOR THE EMPLOYEES:

(Sgd.) W. M. THOMPSON  
SYSTEM GENERATION  
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) A. M. HAND  
GENERAL MANAGER -  
ATLANTIC REGION

There appeare? on behalf of the Company:

R. Colosimo            Supervisor Personnel & Labour Rel's., C.P.R.,  
                                 Montreal  
J. D. Jardine -    AsstT Engineer, A.R., C.P.R., Montreal

And on behalf of the Brotherhood:

W. M. Thompson - System Federation General Chairman, B.M.W.E.,  
                                 Ottawa  
A. Passaretti        General Chairman, B.M.W.E., Montreal

#### AWARD OF THE ARBITRATOR

While submissions from both parties dealt with the facts leading to the imposition of the penalties imposed, the actual complaint involves an interpretation of the procedure provided in Section 9, Clause (a) of Wage Agreement No. 13, to ascertain if there had been a compliance with its requirements. It reads, in part:

"An employee disciplined, or who considers himself unjustly treated, shall have a fair and impartial hearing, provided written request is presented to his immediate supervisor within ten days of date of advice of discipline, and the hearing shall be granted within ten days thereafter."

It was established that originally an investigation had been conducted by the Division Engineer with all the involved extra gang labourers present, as well as their Local Chairman. During this investigation the men acknowledged they had refused to work the extra hours in accordance with instructions. Included in the statement taken at that time were two questions asked of these men, together with their responses:

Question: Have you anything further you wish to add to this statement?

Answer: No.

Question: Are you satisfied with the manner in which this investigation has been conducted?

Answer: Yes.

The statement was signed by each employee, as well as the Local Chairman who was acting as their representative.

Those involved had been instructed to report for this investigation on Monday, May 11, 1964. Instead of reporting as instructed they appeared on that day for work and when not allowed to do so, they left and reported to the Roadmaster for investigation the following day.

For their failure to obey the Foreman's instructions on May 8 to perform the work and to report for investigation, as well as for refusing duty May 8 and 9, these men were assessed 40 demerit marks.

As indicated in the Joint Statement, five of the thirteen employees concerned in effect appealed the discipline assessed in writing, in accordance with Section 9 of Wage Agreement No. 13, requesting what they described as "a fair and impartial hearing", following the imposition of the penalty.

One of the reasons advanced on their behalf by the representative of the Brotherhood before the Arbitrator was the absence of the foreman at the investigation. Apparently the five involved desired an opportunity to question that official.

The request was made by the five employees concerned on May 28. Under date of June 16 it was said the Superintendent replied, advising these employee that the investigation that had been held had been fair and impartial and the discipline assessed was by no means unjust.

On June 20 a request was made by the Local Chairman to meet Mr. Presley with a System Officer.

On June 25 this request was denied and the matter was then referred to the General Chairman to progress. That official wrote Mr. Presley on June 23, requesting an appointment. This was granted and a meeting was held on August 20, 1964.

Obviously on these facts the Company failed to comply with the requirements of Section 9, Clause (a) following the request made by these five employees for a hearing after imposition of the penalty. This request should have been granted within ten days. It is a mandatory requirement and it is not open for the Company to then decide that the previous investigation the Regional Engineer had conducted was a fair and impartial hearing and that another hearing was unnecessary. The employees concerned, or their representatives, upon further consideration thought otherwise and their request for another hearing should have been granted.

For these reasons I find the case must be remitted to the Company to now comply with the request made on May 28, 1964, for "a fair and impartial hearing". The date for this hearing should be set by the Company within ten days from receipt of this judgment, unless the parties mutually agree otherwise

J. A. HANRAHAN  
ARBITRATOR