

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.461

Heard at Montreal, Tuesday, September 10, 1974

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim for removal of discipline assessed, with compensation for time lost by P. Kanigan.

JOINT STATEMENT OF ISSUE:

The Union contends that the dismissal of Machine Operator P. Kanigan for submitting incorrect "Form 140" (personal expenses) for April and May, 1973 was severe and excessive. The Company contends that said dismissal was justified.

FOR THE EMPLOYEES:

(SGD.) G. D. ROBERTSON
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. D. BROMLEY
GENERAL MANAGER, CP RAIL

There appeared on behalf of the Company:

J. E. Cameron - Labour Relations Officer, CP Rail, Montreal
P. Timpson - Assistant Supervisor Labour Relations, CP Rail,
Vancouver

And on behalf of the Brotherhood:

F. Borsa - System Federation General Chairman, B.M.W.E.,
Ottawa
G. D. Robertson - Vice-President, B.M.W.E., Ottawa
A. Passaretti - Federation General Chairman, B.M.W.E., Ottawa
H. J. Thiessen - General Chairman, B.M.W.E., Calgary

AWARD OF THE ARBITRATOR

In the circumstances of his assignment the grievor was entitled, under the collective agreement, to compensation for boarding and lodging expenses necessarily incurred. In fact, he submitted expense accounts in respect of "expenses" which were not incurred at all, and which indeed involved, in some cases, meals provided at

company facilities and for which the grievor ought to have credited the company. Quite apart from this, the greivor admittedly submitted false claims in respect of meals he did not pay for and tips he did not give. He offered no explanation or excuse.

The grievor, who did not have great seniority, had submitted expense accounts previously, and there is no doubt that his action constituted a deliberate attempt to defraud. There is no resemblance between this sort of situation and that in Case No. 451, where an employee submitted what was held to be an excessive account, but which did involve expenses actually incurred. The submission of such a claim in the hope that it will be accepted is obviously a very different matter from the submission, as in this case, of a totally false claim.

It was submitted that the grievor was, at the time, under stress because of his personal situation, but in my view that does not justify what was plainly a deliberate attempt to defraud the company. It was also argued at the hearing (although it was not referred to in the Joint Statement of Issue) that the company failed to respond to the appeal at the superintendent's level within the time set out and that, by virtue of article X of the May 14, 1971 Master Agreement, the claim must be paid. Apart from the question whether I would have jurisdiction to consider that question, it is my view that while this grievance includes a claim for compensation, it is essentially based on a claim for wrongful dismissal, and is not "based on a claim for unpaid wages" within the meaning of article X of the Master Agreement. It is only to that special type of case that article X applies.

In my view the attempt by the grievor to defraud the company did constitute just cause for discharge, and the grievance is therefore dismissed.

J. F. W. WEATHERILL
ARBITRATOR