

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 610

Heard at Montreal, Tuesday, June 14th, 1977

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL-PA.R.)

and

UNITED TRANSPORTATION UNION (T)

EXPARTE

DISPUTE:

Discipline of 30 demerit marks assessed 28 Yardmen employed at Coquitlam, B.C., for booking sick while either on or off duty or "booking off", on August 13th and 14th, 1975.

EMPLOYEE'S STATEMENT OF ISSUE:

Forty-one Yardmen booked off duty between 1605, August 13th and 1220, August 14th, 1975. Some of these Yardmen booked sick while either on or off duty while others "booked off". An investigation was held and thirty Yardmen were assessed 30 demerit marks each as follows:

"Fourteen Yardmen were assessed 30 demerit marks each for booking sick while on duty, in concert with other Yardmen, thereby contributing to a work stoppage by Yardmen at Coquitlam, August 13th and 14th, 1975."

"Sixteen Yardmen were assessed 30 demerit marks each for failure, in concert with other Yardmen, to be available for duty thereby contributing to an almost total work stoppage by Yardmen at Coquitlam on the afternoon shifts on August 13th and 14th and on the night shift on August 13th, 1975."

The Union appealed the discipline assessed 28 of the Yardmen contending that the Company had violated Article 13, Clause (d) of the Collective Agreement which states as follows:

"An employee will not be disciplined or dismissed until after investigation has been held and until the employee's responsibility is established by assessing the evidence produced and no employee will be required to assume this responsibility in his statement or statements. The employee shall be advised in writing of the decision within 20 days of the date the investigation is completed, i.e., the date the last statement in connection with the investigation is taken except as otherwise mutually agreed."

The Union further contends the following:

- (a) The investigations held were not fair and impartial.
- (b) The Company did not assess the discipline on the evidence produced.
- (c) The discipline, in any case, was too severe.

FOR THE EMPLOYEES:

(SGD.) P. P. BURKE  
GENERAL CHAIRMAN

There appeared on behalf of the Company:

L. J. Masur	Supervisor Labour Relations, CP Rail, Vancouver
J. T. Sparrow	Manager, Labour Relations, CP Rail, Montreal
A. E. Hilling	Retired Superintendent (Vancouver Division) CP Rail

And on behalf of the Brotherhood:

P. P. Burke	General Chairman, U.T.U.(T)	Calgary
R. T. O'Brien	Vice-President, U.T.U.	Richmond, B.C.

#### AWARD OF THE ARBITRATOR

There can be no doubt, from the material before me, but that Coquitlam Yardmen did in fact engage in an illegal strike by booking off or booking sick on August 13 and August 14, 1975. This was apparently a response to disciplinary action taken against an employee. It is clear that such a response was quite improper. While the company may be considered to have "allowed" the employees to book off sick, there is no merit in the union argument that the company somehow condoned or contributed to the work stoppage. There was an illegal stoppage, and those who contributed to it would be subject to severe discipline.

The question is whether discipline was properly imposed on each of the grievors in this case.

I do not consider that the hearings conducted were in themselves unfair, or that the failure to investigate certain employees showed (in the circumstances of this case) any improper discrimination. The question is, however, whether the investigations established that the individuals concerned had in fact abused the booking off or booking sick procedure, and had indeed participated in an illegal strike.

As I have indicated, it is clear that there was an illegal strike, and I am satisfied that many of the grievors must have participated in it. These are individual cases, however, and the onus is on the company to establish the employee's improper conduct in each case. At the investigation each of the grievors acknowledged that he had booked sick or booked off, and that to do so in concert with others would be an abuse of the procedure. Each of them denied having done so in this case, and some of them offered description of some illness or injury which they considered justified their booking-off. At a

supplementary investigation, each of the grievors denied having discussed the matter of booking sick with others, denied being influenced by others, denied (in most cases), any appearance of strangeness in the events in question, and denied any realization of participation in a work stoppage.

The responses of the grievors are to be viewed with scepticism. In view of the obvious fact that an illegal strike did take place, it can only be concluded that some at least of the grievors lied in their responses to the questions put to them. The issue here, however, is an individual one, to be decided with respect to each grievor: has it been shown that he participated in the strike? On this question, the only evidence (unreliable as it may be) is that he did not. The grievors were not called on to justify their having booked sick or booked off, as they might have been in the circumstances. They were simply asked, in effect, if they participated in an illegal strike, and they denied that they had. There is no proof that any individual grievor in fact participated in the strike, although it has been shown that a strike took place, and it is apparent that many of them must have participated in it. The onus on the company in a case such as this, however, is not merely to show that an offence occurred, but to show as well that it was committed by the person disciplined for it. In this case, that has not been shown with respect to the individual grievors.

For the foregoing reasons it is my conclusion that the company's case has not been made out. With respect to the sort of evidence required in a case such as this, reference may be made to the remarks set out in Cases 27 and 349. The grievances are allowed.

J.F.W. WEATHERILL  
ARBITRATOR