

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 772

Heard at Montreal, Wednesday, September 10, 1980

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT
HANDLERS,
EXPRESS AND STATION EMPLOYEES

DISPUTE:

Dismissal of Mr. R. Labelle of Outremont Freight Terminal.

JOINT STATEMENT OF ISSUE:

On January 22, 1980 Mr. R. Labelle was observed leaving work prior to the end of his shift. An investigation was held and it was established and admitted to by Mr. Labelle that he did leave work early and that he requested another employee punch his time card. Mr. Labelle was subsequently dismissed for this offence.

The Union contended dismissal was not warranted and recommended the discipline be reduced to 30 demerit marks and that he be returned to service without loss of seniority and other benefits and that he be reimbursed for all lost time.

The Company denied the Union request.

FOR THE EMPLOYEE:

(SGD.) W. T. SWAIN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. B. CHABOT
GENERAL MANAGER,
O.&M.

There appeared on behalf of the Company:

J. R. Cuin	Supervisor, Labour Relations, CP Rail, Montreal
S. J. Samosinski	Labour Relations Officer,
M. Lepore	General Shed Foreman, Outremont Frt. Terminal, CP Rail

And on behalf of the Brotherhood:

W. T. Swain	General Chairman, BRAC, Montreal
D. Herbatuk	Vice General Chairman, BRAC, Montreal
P. Vermette	Local Chairman, BRAC, Montreal

AWARD OF THE ARBITRATOR

There is no dispute as to the facts, which were frankly acknowledged by the grievor at the investigation. On January 22, 1980, the grievor left work at 1500 hours, giving his time card to another employee to punch out for him at 1600 hours, his usual quitting time. It would seem that on one or two other occasions the other employee had punched out the grievor's card when the grievor had meetings in the front office, so that he would not have to leave the meetings. Such a practice, while contrary to the rules respecting time cards, would not involve any financial loss to the Company. It may be that the other employee assumed that a similar situation existed in this case. In fact, however, the grievor was simply leaving work early, and trying to avoid loss of pay. He did not have permission to leave early.

The other employee, for his misconduct, was assessed twenty-five demerits.

The Union, while acknowledging that the grievor's action was wrong, seeks to reduce the penalty to one of 30 demerits, and compares the Company's action here with that taken earlier in the case of a Mr. Desjardins. The two cases are distinguishable, although in my view the grounds of distinction on which the Company relied are not valid ones. The fact that Mr. Desjardins had only a year's service while the grievor has some thirteen (and there is no evidence of any discipline record), tells rather in the grievor's favour than in Mr. Desjardins. Also the fact that the grievor was a local union representative, while no doubt embarrassing to the union, is not a material consideration in cases not relating to his conduct in that office. The important ground of distinction between the cases, however, is that Mr. Desjardins had another employee punch out his card as a matter of convenience, within a minute or two of his leaving work, so that he could go and warm up his car. It was not the sort of attempt to defraud in which the grievor engaged.

While the grievor's offence was an extremely serious one - much more so than Mr. Desjardin's - there are factors which would support his reinstatement in employment. These include the Company's improper reliance on the fact of his union office in assessing the penalty; the fact of the grievor's substantial service and apparently clear record (there is no evidence on the point); and the fact of the grievor's forthright account of the matter at the investigation. In the Hawker Siddeley case, 13 L.A.C. (2d) 1, an employee who had arranged to have a false time card submitted (falsely claiming four hours' pay) and who lied about the matter when it was investigated, was nevertheless reinstated in employment. Whatever may be said as to that decision, it is clear that the grievor's case is a stronger one.

Having regard to all of the circumstances of the instant case, it is my award that the grievor be reinstated in employment without loss of seniority, but with no compensation in respect of any loss of earnings.

J. F. W. WEATHERILL
ARBITRATOR