

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 818

Heard at Montreal, Tuesday, March 10, 1981

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of Track Maintainers D.V. Bell, D.W. Blair, C.R. Cleghorn, R.A. Thompson and R.E. Vail for the removal of discipline assessed with compensation for time lost.

JOINT STATEMENT OF ISSUE:

On March 18th, 1980, the various Maintenance of Way forces at McAdam were instructed to perform their various duties. Messrs. Bell, Blair, Cleghorn, Thompson and Vail refused their initial and subsequent instructions to go out and perform required work because it was raining. The above employees felt that Article 12.4, Wage Agreement No. 17, Wet and Stormy Days, allowed them to refuse work on such days provided they remain on duty. Following the final instruction, the employees were advised that they were removed from service. An investigation was held and the employees were subsequently assessed 40 demerits for insubordination to their supervisor in refusing to work when ordered to do so.

It is the contention of the Union that the discipline assessed the grievor for alleged insubordination because they declined to work in the rain on March 18, 1980 was unwarranted.

It is the Company's contention that the discipline was justified.

FOR THE EMPLOYEES:

(SGD.) H.J. THIESSEN
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J.B. CHABOT
GENERAL MANAGER,
OPERATION &
MAINTENANCE

There appeared on behalf of the Company:

J.A. McGuire -- Manager, Labour Relations, CP Rail,
Montreal
S.J. Samosinski -- Labour Relations Officer, CP Rail, Montreal
J.R. Cuin -- Supervisor of Labour Relations, CP Rail,
Montreal

S.K. Chopra -- Division Engineer, Saint John Division, CP
 Rail, Saint John
G.A. Chase -- Roadmaster, CP Rail, McAdam

And on behalf of the Brotherhood:

H.J. Thiessen -- System Federation General Chairman, BMW, Ottawa
A. Passaretti -- Vice-President, BMW, Ottawa
R. Wyrostok -- Federation General Chairman, BMW, Regina
E.J. Smith -- General Chairman, BMW, London
L. DiMassimo -- General Chairman, BMW, Montreal

AWARD OF THE ARBITRATOR

The grievors were assigned to the section gang headquartered at McAdam, N.B. On March 18, 1980, they reported for duty at 7:00 a.m. From all of the material before me, it is clear that it was raining heavily that day. The temperature was not much above freezing. At 7:15 a.m. the Track Maintenance Foreman went to the toolhouse where the work force was located and instructed the employees as to their duties that day. These duties particularly involved the opening-up or the keeping open of all waterways along the right-of-way in the McAdam area. There had been considerable flooding, and it was important that water along the right-of-ways be drained before it froze, as it was anticipated might occur. Continuing rain, and freezing weather at night had been predicted.

The members of the regular crew went to work, although working conditions were obviously unpleasant. It may be noted that the nature of the work is that it is performed out of doors, and employees are naturally expected to come to work prepared for existing weather conditions. There is, indeed, no suggestion that any of the grievors had come to work without proper clothing. While some temporary employees also went to work, the grievors (who are temporary employees) refused to carry out their assigned duties, but remained in the toolhouse, ready to carry out whatever work might be assigned to them there (none was), but unwilling to go out into the rain to carry out the work that had to be done. As a result, not all of the drains in the area were kept open, and some areas had to be cleared with picks, following the freeze-up which later occurred. It may be added that while working conditions were no doubt unpleasant on the day in question it is not suggested that there was any particular danger to the employees' safety.

In justification of their refusal to perform their assigned work, the grievors rely on Article 12.4 of the Collective Agreement, and on the advice they were given by a Union representative in Montreal, whom they called on the telephone that day, as well as on advice said to have been given by a Company instructor at a maintenance of way training school. Article 12.4 of the Collective Agreement is as follows:

"Regular assigned employees shall be allowed straight time for wet or stormy days, provided they remain on duty."

The Union representative and, apparently, the maintenance of way instructor had assured the grievors that this Article meant that employees "did not have to work in the rain", and that all they need do, if it were raining, was to stay in the toolhouse and perform whatever odd jobs might be available, and be assured of their pay as long as they remained "on duty". In view of the general nature of the grievors' work, which is, as I have said, outdoor work, such a surprising interpretation could only be supported by clear language to that effect. No such language appears in this Article. The real effect of the Article is not to assure employees that they need only work when the weather is fair, but rather to protect them from loss of earnings where, because of inclement weather, certain work is not performed. In some cases, due perhaps to the quality of work possible in bad weather, or perhaps to the condition of materials, the Company might decide not to have some of its regular work performed. Article 12.4 provides that employees in such cases shall nevertheless be allowed straight time, provided they remain on duty.

The instant case is the contrary of what is contemplated in Article 12. Here, it was precisely because of the wet and stormy conditions that the employees were needed at work. Whether or not the situation was an "emergency" is irrelevant. There was work which the grievors were assigned, and nothing in Article 12.4 or in any other provision of the Collective Agreement justified their refusal of that assignment.

The grievors were, quite properly, relieved from duty on the day in question. In my view, they were quite properly assessed demerit points as well. In considering the extent of the penalty involved, regard may be had to the fact that they acted on the advice of a Union representative and, so they felt, in reliance on the opinion of a Company instructor. While this reliance may be a sign of good faith on the grievors' part, it does not relieve them from individual responsibility for their actions. The situation was one in which they were obviously needed at work, and in which they quite consciously disobeyed the clear instructions of a supervisor. It is a serious case of insubordination, and one for which a substantial penalty could properly be assessed.

Having regard to all of the circumstances, and considering that in an apparently similar case the Company saw fit to assess a penalty of thirty demerits, it is my view that in the instant case the penalty should not be greater than that. Further, there was no justification for holding these employees out of service beyond the day in question. It is, therefore, my award that the records of the grievors be amended to show penalties of thirty demerits for this incident, and that any of the grievors who can be shown to have lost work as a result of having been held out of service after the day in question be compensated therefor.

J.F.W. Weatherill,
Arbitrator.

