

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 840

Heard at Montreal, Tuesday, June 9, 1981

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED
(CP TRANSPORT - WESTERN DIVISION)

and

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

EX PARTE

DISPUTE:

The Union claim that Mr. A. Parsons was unjustly dealt with when he was dismissed and that he should be returned to service without loss of pay.

EMPLOYEES' STATEMENT OF ISSUE:

Mr. A. Parsons received Form C.P.T. 660 dated March 24, 1981, which states Please be informed that "60" demerit marks have been placed against your record for the following reasons: "deliberate disobedience of instructions issued by Chief Linehaul Dispatcher J.A. Cosar on February 13, 1981, to take rest at Osoyoos, B.C. on February 14, 1981, on your return from Trail B.C." Mr. Parson also received a letter dated March 24, 1981, which states: "This is to advise you that your services are being terminated immediately, account accumulation in excess of sixty (60) demerits. Total demerits accumulated to date are 155.

The Union appealed the decision, claiming that Mr. Parsons be reinstated with full compensation.

The Company rejected the request.

FOR THE EMPLOYEES:

(SGD.) R. WELCH
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) N.W. FOSBERY
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

N.W. Fosbery -- Director, Labour Relations, CP Transport,
Toronto

J.A. Cosar -- Chief Highway Dispatcher, CP Transport,
Vancouver

And on behalf of the Brotherhood:

P.L. Rouillard -- Vice-General Chairman, BRAC, Vancouver

M. Krystofiak -- Vice-General Chairman, BRAC, Calgary

AWARD OF THE ARBITRATOR

The grievor had been assigned a run from Vancouver to Trail and return. The distance between these points is 407 miles, and it normally takes ten to eleven hours to travel. It would appear that the grievor went on duty at 2230 on February 12th. The following morning the grievor experienced problems with his tractor near Headley, some 200 miles east of Vancouver. He contacted the Company, and was instructed to proceed to Osoyoos (fifty miles further east) and take eight hours' rest. The grievor requested permission to go straight through to Trail, but after considering that request (and consulting with the Union Vice-Chairman), the instruction to take rest at Osoyoos was confirmed, and the grievor complied with it. The grievor was given further instructions as well: that after rest at Osoyoos, he was to proceed to Trail, drop his trailer and pick up his westbound trailer and proceed to Vancouver (subject to fuel stops), and taking a further eight hours' rest at Osoyoos.

Following rest at Osoyoos on February 13th, the grievor came on duty at 2015 hours. He arrived at Trail at 0218 on February 14th. He requested (by way of more than one telephone call) permission to run directly to Vancouver, but this was refused, and his instructions to take rest at Osoyoos on the return trip were confirmed. The grievor left Trail at 0430 on February 14th and proceeded straight through to Vancouver where he arrived at 2318. He did not take rest at Osoyoos. It will be noted that when he arrived at Vancouver it was then some 27 hours since he had come on duty.

The grievor contends that his instructions were changed, and that he was in fact told to proceed directly from Trail to Vancouver. In the alternative, it is suggested that he was confused by the telephone conversations, and that the order was not clearly communicated to him. In my view, neither of these contentions succeeds. The direct evidence, given at the hearing, is that the grievor had been clearly instructed, in the first instance, to take rest at Osoyoos on his return from Trail (that instruction, at least, is not denied). It is, in my view, highly unlikely that an instruction to take rest would be changed in the circumstances described: the grievor had come on duty at Osoyoos at 2015 on the 14th. It was some seven hours later, having arrived at Trail, that he sought permission then to make a straight run back to Vancouver. Since permission to make the shorter run from Headley to Trail had been refused the previous day, it was even less likely that permission to make the entire run from Trail to Vancouver would be granted where the grievor had already been on duty seven hours. While the Chief Dispatcher may have indicated that he did not want equipment delayed in Trail, that was perfectly consistent with his instruction to proceed to Osoyoos, and does not support the improbable suggestion (said to have been made at about 3:00 a.m.), that the grievor was expected back in Vancouver in the early afternoon. A change of instruction to that effect would, I

think, have been improper. At any rate, from the material before me, including the direct evidence, I am satisfied that no such change of instructions was made, and that the grievor had no justification for proceeding through to Vancouver without rest. In my view, he deliberately disobeyed the Dispatcher's instructions.

Such deliberate disobedience is a serious offence, and merits a substantial penalty. In my view, however, the assessment of sixty demerits in respect of this particular offence was excessive, particularly where another employee, implicated in the same offence, was assessed a much lower penalty (see Case No. 838). It is my award that the assessment of sixty demerits should be set aside and a penalty of thirty demerits substituted therefor. In the result, there is no effect on the grievor's employment status, since his disciplinary record at the time stood at thirty-five demerits.

J.F.W. Weatherill,
Arbitrator.