

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 865

Heard at Montreal, Thursday, September 10, 1981

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Dismissal of Trainman D. Pearson, Revelstoke, B.C. for accumulation of demerit marks resulting from the assessment of 40 demerits for delaying four trains between September 16, 1980 and October 18, 1980 to take meals.

JOINT STATEMENT OF ISSUE:

An investigation was held at Revelstoke on December 31, 1980, in connection with delay to Train No. 821 - September 16, 1980; No. 677 - October 7, 1980; No. 482 - October 17, 1980; No. 821 - October 18, 1980, account taking meals en route. Following the investigation, Trainman Pearson was issued Form 104's dated January 9, 1981, stating as follows:

"Please be informed that your record has been debited with FORTY (40) demerit marks for your responsibility in delaying the following trains to take meals in violation of the Memorandum of Understanding dated September 13, 1980:

#821 - September 16, 1980
#677 - October 7, 1980
#482 - October 17, 1980
#821 - October 18, 1980

Please be informed that you have been DISMISSED for accumulation of demerit marks."

The Union appealed the discipline assessed Trainman Pearson requesting the removal of the 40 demerit marks and reinstatement into service with payment for all time lost, on the grounds the Company did not establish any responsibility in respect to the charges against him. The Union further contends the Company violated Article 23, Clause (g) and Article 32, Clauses (c), (d) and (e) of the Collective Agreement.

The Company declined the appeal on the basis that the investigation was properly conducted and the discipline assessed was proper and justified based on the evidence produced at the investigation.

FOR THE EMPLOYEES:

FOR THE COMPANY:

(SGD.) P. P. BURKE
GENERAL CHAIRMAN

(SGD.) L. A. HILL
GENERAL MANAGER,
OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

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| L.J. Masur | -- Supervisor, Labour Relations, CP Rail, Vancouver, B.C. |
| J.M. White | -- Superintendent, CP Rail, Revelstoke Division, Revelstoke, B.C. |
| P.E. Timpson | -- Labour Relations Officer, CP Rail, Montreal |

And on behalf of the Brotherhood:

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| P.P. Burke | -- General Chairman, UTU, Calgary, Alta. |
| R.T. O'Brien | -- Vice-President, UTU, Ottawa, Ont. |
| J.H. McLeod | -- Vice-General Chairman, UTU, Medicing Hat, Alberta |
| W.J. Cyronek | -- Local Chairman, UTU, Revelstoke, B.C. |

AWARD OF THE ARBITRATOR

The grievor was assessed ten demerits in respect of each of four occasions on which he is said to have delayed, or participated in the delay of trains.

This case is, in its essentials, similar to cases 862 and 863, and the general considerations there set out apply equally here. On the material before me, it is clear that in each of the four instances referred to (some at least of which involve the same trips as those dealt with in one or another of those cases), the train was in fact delayed because the crew took time to go to a restaurant for lunch. There had, as I find, been occasions in course of the tours of duty involved when the grievor could appropriately have eaten his lunch. There is nothing to support the conclusion that any very exceptional circumstances existed which would have justified the crew in delaying the train while they went to a restaurant. There is, it should be repeated, no doubt that employees are entitled to eat, and the collective agreement expressly deals with the matter. It is clear, however, that it will only be in exceptional circumstances that employees could be justified in delaying a train in order to go to a restaurant to eat. Such circumstances did not exist in this case.

The grievors in cases 862 and 863 were (quite properly, as it was held) assessed twenty demerits in respect of offences such as these. They had been leaders in the illegal strike or strikes which had been taking place at the material times. The grievor does not appear to have had such a role, and it was proper that a lesser penalty be assessed. Ten demerits would be appropriate in respect of each instance, in my view.

The grievor's case is also different in that he worked as a trainman, not as a conductor or engineman, and would not have the same responsibility for the movements of the train as would the others. He was, however, subject to the same expectation of responsible adult

behaviour as any other employee. While the grievor indicated he had some difficulty in remembering the events of the days in question (the investigation having been understandably delayed in the circumstances), he would surely have recalled any situation in which he raised - as he ought to have - any objectionsto the clearly improper conduct of his fellow workers, or refused to join them in it. The grievor did not suggest at all that he was really not part of what took place.

I quite agree with the union submission that "group punishment" would be improper, as such. Discipline may properly be imposed upon an individual only where just cause is shown in that individual's case. In the instant case, the material before me establishes such just cause. It may be repeated that it was certainly proper for the grievor to eat during his tour of duty - everyone recognizes that - but it was not proper - because not necessary - for him to delay his train in these cases in order to do so.

For the foregoing reasons, the grievance with respect to the imposition of forty demerits is dismissed. If, in the result, the grievor has accumulated sixty demerits, then the grievance against dismissal is also dismissed. If, however, the grievor's record shows less than sixty accumulated demerits (and in case no. 864 the assessment of 20 demerits was held not to be justified), then the grievor should be reinstated in employment without loss of seniority and with compensation for loss of earnings.

J.F.W. Weatherill
Arbitrator