

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 866

Heard at Montreal, Thursday, September 10, 1981

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Dismissal of Yardman/Yard Foreman K. W. Brownlow, Revelstoke, B.C. for accumulation of demerit marks in excess of 60 resulting from discipline assessed on September 29, October 7 and October 9, 1980.

JOINT STATEMENT OF ISSUE:

Yard Foreman K. W. Brownlow had 20 demerit marks on his record. He was assessed 20 demerit marks for each of the following three incidents which for the reasons stated the Union is appealing, resulting in his dismissal for accumulation of demerit marks:

1. Yard Foreman Brownlow reported for duty on his regular assignment at 2350 September 2, 1980, and booked sick. He was absent from duty from 2350, September 2 until 2350 September 8, 1980. The company conducted an investigation into his absence and assessed 20 demerit marks for booking sick to avoid work and for being absent from work without authorized leave at Revelstoke, B.C., September 2 to September 8, 1980.

The union contends that Yard Foreman Brownlow was sick and as such was unable to perform his duties and a leave of absence has never been requested for sickness. The investigation did not disprove the illness and no discipline was warranted.

The company contends the discipline assessed was proper and justified based on the evidence adduced at the investigation.

2. The company contends that on September 20, 1980, Yard Foreman Brownlow used delaying tactics while switching, resulting in delay to Train #67 and loss of productivity. An investigation was held on September 30 and Yard Foreman Brownlow was assessed 20 demerit marks for using delaying tactics while switching, resulting in delay to Train #67 and loss of productivity, Revelstoke Yard, September 20, 1980.

The union contends that the issue is a difference of opinion on the safest switching methods and that it called for nothing more than a supervisory prerogative to illustrate a better method that was equally as safe and no discipline was warranted.

The company contends the discipline assessed was proper and justified

based on the evidence adduced at the investigation.

3. On October 8, 1980, the company investigated Yard Foreman Brownlow's method of handling switching assignments given him on October 2, 1980. Twenty demerit marks were assessed for his failure to remove cars from Train #67 as required by switch list and failing to advise Yardmaster of this fact, resulting in cars leaving terminal and necessitating backhaul, causing loss of car days and customer dissatisfaction, Revelstoke Yard, October 2, 1980.

The union contends that the evidence produced proved that Yard Foreman Brownlow was not given any instructions as to the preference to switch out these cars before other work and he was not informed as to the time #67 was ordered. The onus was not, therefore, on the Yard Foreman to advise the Yardmaster when the work was completed and it was the Yardmaster's responsibility to make sure #67 was ready to depart. The discipline, therefore, was not warranted.

The company contends the discipline assessed was proper and justified based on the evidence adduced at the investigation.

The Union is also requesting reinstatement into service with the Company and payment for time lost.

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:

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, Quebec

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

The first ground of discipline of the grievor is his alleged booking sick to avoid work and his unauthorized absence from work from September 2 to September 8, 1980.

The grievor did book sick immediately upon arrival at work at 2350 on

September 2. This of course caused inconvenience and delay, but it is possible that the grievor felt well before and suddenly became too ill to work. The grievor remained away from work, apparently without providing any notice to the company, for some six days.

The evidence does not permit the conclusion that the grievor's booking off sick on September 2 was "to avoid work" and not because he was truly sick. What was said in CROA cases 27 and 349 applies in this respect. There is, however, no doubt that the grievor was absent from work without authorized leave throughout the period in question. While the grievor stated that he was sick, the explanation is not convincing in respect of such a long period, particularly when the grievor did not seek weekly indemnity payments (payable after three days' absence), nor seek medical attention. While the grievor's statement that he was sick might be acceptable as justification of his conduct on September 2, it does not of itself justify his protracted absence without authorization.

In my view, therefore, the grievor was subject to discipline in respect of his absence without leave. The penalty imposed was not excessive.

The second ground of discipline is that the grievor used "delaying tactics" while switching on September 20.

At the time in question, the grievor had only recently been promoted to be Yard Foreman. He had, however, considerable experience in switching the yard in question. He was aware of the practice in that yard of switching without the train air line being cut in. By such a method, very substantial savings of time can be effected. The grievor chose not to follow the usual practice but to perform switching with the air cut in. This resulted in a significant waste of time.

The grievor was familiar with the regularly-used method, which was a safe one where the rules are followed. While newness on the job as Yard Foreman might explain delays with respect to particular moves, that is not the case with respect to the general decision to have the air cut in. There was not justification for such a decision, and the explanation that it was a delaying tactic seems a probable one.

In my view, the grievor was subject to discipline on the second ground as well. Again, the penalty imposed was not excessive.

The third ground of discipline is that the grievor failed to remove certain cars from a train as required by the switchlist.

The grievor had been given a switch list relating to Train No. 67 and had performed part of the work required when he was called and given a second list relating to another train. He was given no instructions as to the priority of his work. It would seem that Yard Foremen make their own determinations (subject to priorities of which they may be advised) of switching order, although it may be that one would generally expect a first list to be completed before a second list is begun. Here, however, there were some grounds for thinking that the second list, which related to a coal train, had some urgency to it.

The grievor was not told of any priorities, and it was not his responsibility to authorize the departure of Train No. 67. There appears to have been no confirmation that the switching with respect to it was completed. In my view it would have been proper to discuss with the grievor the matter of priority in switching, but I do not consider that the grievor was subject to formal discipline.

Accordingly, the grievance relating to this third ground of discipline is allowed. The twenty demerits are to be struck from the grievor's record. It would appear that the grievor has nevertheless accumulated 60 demerits having regard to the first two matters dealt with in this award and to his previous record referred to in the joint statement. Because of the accumulation of demerits no award of reinstatement will be made.

J.F.W. Weatherill
Arbitrator