

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 949

Heard at Montreal, Wednesday, May 12, 1982

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(PRAIRIE REGION)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The Company dismissed Extra Gang Foreman K. G. Menzel on October 2, 1981, for violation of Rule G on September 8, 1981, and falsification of Company payroll time sheets, September 11, 1981.

JOINT STATEMENT OF ISSUE:

The Union contends that dismissal is too severe a penalty in the instant case because:

1. Mr. K. G. Menzel had worked extra time without having submitted payment for same and therefore, by having an early quit on September 11, 1981, was doing this to compensate for the previous hours worked and not paid for.
2. There is no conclusive proof except for having one bottle of beer on September 8th.

The Union claims K. G. Menzel should be reinstated to the position of Track Maintenance Foreman and paid all compensation from October 5, 1981, until reinstated and all seniority rights restored save that of Extra Gang Foreman.

The Company declines payment of claim and reinstatement.

FOR THE UNION:

FOR THE COMPANY:

(SGD.) H. J. THIESSEN  
System Federation General Chairman

(SGD.) R. J. SHEPP  
General Manager  
Operation and Maintenance

There appeared on behalf of the Company:

F. B. Reynolds - Supervisor, Labour Relations, CPR, Winnipeg  
R. E. Petley - Assistant Regional Engineer, CP Rail,  
Winnipeg  
R. A. Colquhoun - Labour Relations Officer, CP Rail, Montreal

And on behalf of the Union:

F. L. Stoppler - Vice-President, BMWE, Ottawa  
A. Passaretti - Vice-President, BMWE, Ottawa  
H. J. Thiessen - System Federation General Chairman, BMWE,  
Ottawa  
R. Wyrostok - Federation General Chairman, BMWE, Edmonton  
E. J. Smith - General Chairman, BMWE, London

A. W. Olson

- General Chairman, BMWE , Regina

#### AWARD OF THE ARBITRATOR

The grievor's seniority date is February 3, 1976. At the material times, he was employed as an Extra Gang Foreman on the Maintenance Gang on the Hardisty Subdivision. The grievor was investigated with respect to working conditions on the gang and the grievor's work performance as Extra Gang Foreman. The grievor had Union representation at the investigation, and was satisfied with the way the examination was conducted. It would appear that the matter arose as a result of complaint made by other employees.

There is no doubt that the grievor was in violation of Rule "G". He himself admits to having a beer while at work, and from the material before me it appears that the grievor had more than one in his possession while at work, whether or not he drank them all. That was of course a serious offence, especially in the case of an employee having responsibility for the direction of others.

There is no doubt, either, that the grievor falsified the payroll time sheets, putting down as hours worked, hours that were not worked. While the grievor maintains that this was to make up for previous extra time worked but not claimed for, such a position is obviously self-serving and inherently unlikely. One would expect overtime if authorized - to be claimed for as such. In fact, as I find, the grievor, who had been reminded not to quit early on Fridays, had not been given permission to do so on the day in question, and appears to have put in a false claim to cover up for that.

The grievor was subject to discipline on both counts. Each is a very serious one. While it was argued that the Company was not consistent in its application of discipline, in that another employee who had committed a Rule "G" violation some years ago was not disciplined it cannot be said that this isolated and outdated instance contributes any proof that the Company was improperly discriminating against the grievor, nor does it persuade me that if one case of misconduct was overlooked, all cases should be overlooked.

The grievor was properly subject to discipline, and having regard to all of the circumstances, it is my conclusion that discharge was justified. The grievance is accordingly dismissed.

J. F. W. WEATHERILL,  
ARBITRATOR