

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 983

Heard at Montreal, Wednesday, September 15th, 1982

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(PACIFIC REGION)
and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Discipline of 35 demerits assessed to Leading Track Maintainer D. F. Bobyak for his act of insubordination, by striking a Company Supervisor at Andrew, Alberta, November 13, 1981.

JOINT STATEMENT OF ISSUE:

On November 13, 1981, Leading Track Maintainer D. F. Bobyak entered a Company bunkhouse, asked Foreman Mihalcean what he was doing in the bunkhouse, and then struck the Foreman in the face knocking off his glasses.

The Union contends that:

- (1) The incident took place after working hours.
- (2) D. Bobyak was not insubordinate as M. Mihalcean was not his immediate supervisor.
- (3) All discipline should be removed.

The Company contends that discipline assessed Mr. Bobyak's record was Warranted and has denied the Union request.

FOR THE UNION:

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

FOR THE COMPANY:

(SGD.) L. A. HILL
General Manager,
Operation and Maintenance

There appeared on behalf of the Company:

R. A. Colquhoun - Labour Relations Officer, CP Rail, Montreal
F. R. Shreenan - Assistant Supervisor, Labour Relations, CP
Rail, Vancouver

And on behalf of the Brotherhood:

H. J. Thiessen - System Federation General Chairman, BMW, Ottawa
E. J. Smith - General Chairman, BMW, London

AWARD OF THE ARBITRATOR

There is really no dispute as to the facts. On November 13, 1981, the grievor, whose regular hours of work were from 0800 to 1630, called in to advise that he was sick and would not be in to work. The message was taken by Mr. Mihalcean, a foreman (and a member of the bargaining unit), who was asked to pass it on to the grievor's foreman, Mr. Chornohus. At the end of the day, at about 1635, the grievor came to the bunkhouse, to advise his foreman that he intended to show up for work the following Monday. It would seem that Mr. Chornohus was not there, but that Mr. Mihalcean was. The grievor, entering the bunkhouse and seeing Mr. Mihalcean, asked him what he was doing there. There was certainly nothing improper in Mr. Mihalcean's being there, and in fact he was finishing up certain paperwork. (Mr. Mihalcean's statement was that the grievor said "What the hell are you doing here, you're not supposed to be here").

According to the grievor, Mr. Mihalcean replied (quite properly, one would think), that it was none of the grievor's business. Mr. Mihalcean then said "How come you are taking days off, or are you on holidays?". While this sort of sarcasm might better have been left unsaid, it was not entirely unjustified in the circumstances. It was certainly not of such a nature as to provoke the assault which then took place. As the grievor stated "I did not like this so I went and slapped him". It was Mr. Mihalcean's statement that the grievor "struck me in the face with his clenched fist knocking my glasses off". Another employee who was present stated that the grievor "struck the foreman in the face knocking off his glasses". It was the foreman's statement that the other employee grabbed the grievor and restrained him from further action.

Clearly the grievor committed an unjustified assault on the foreman. It is of no significance that the foreman was not the grievor's immediate supervisor". While the grievor may have been annoyed by the foreman's words, they did not constitute "provocation" of that assault. There can be no doubt that the grievor was subject to discipline in the circumstances, and I do not consider that the assessment of thirty-five demerits was excessive in the circumstances.

The grievance is therefore dismissed.

J.F.W. WEATHERILL
ARBITRATOR.