

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1010

Heard at Montreal, Wednesday, November 10th, 1982

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(PACIFIC REGION)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

K. F. Jones, S. Brighton, V. Scherm and C. B. Moorwood were assessed 40 demerit marks each for violation of Rule "G", Revelstoke, B.C., December 18, 1981.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The employees are headquartered in Railway Boarding cars and, therefore, are continually on Company property.
2. The four employees did not work on December 18, 1981.
3. The discipline assessed was excessive and request that the discipline be reduced.

The Company declines the Union's contentions.

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:

L. J. Masur - Supervisor, Labour Relations, CPR, Vancouver
R. A. Colquhoun - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

The grievors were members of a six-man Bridge & Building gang. The gang was boarded on Company outfit cars stationed at Revelstoke Yard. At the time in question they were making repairs on a bridge at

Mileage 17.5, Shuswap Subdivision. Their working hours were from 0700 to 1530 hours per day, with 30 minutes for lunch. They would load tools and supplies on trucks in Revelstoke Yard, and proceed to the work site, arriving there at about 7:30 or 7:45.

Neither the grievors nor the other two members of the gang (one of whom was the Foreman) proceeded to the work site on December 18, 1981, although it was a regular working day. While present in the outfit car in Revelstoke Yard, and so on the Company's premises, they did not in fact report for work in the sense of presenting themselves for service, although they were all subject to duty, in the sense that they were required to report for work and perform their assigned duties.

The grievors, with the exception of Mr. Scherm, had all been drinking at a Christmas party the night before. It seems clear that they all arrived at work hung over (except for Mr. Scherm), and that most of them were late. When the Foreman himself arrived late (and hung over) and indicated that he considered it "a lost day", they all seem to have given themselves over to drinking. They continued until they were discovered shortly after 1300 (those who had not passed out), and some seem to have continued after that. Mr. Scherm is, again, an exception: while he did drink two beers during the course of the morning, he went home shortly after 1200.

Whether or not each of the grievors was aware of the terms of Rule "G", there is no doubt that each of them knew it was wrong to drink while subject to duty and, especially, that it was wrong to drink on Company premises during working hours - or during what ought to have been their working hours. The offence was a flagrant one, and justifies very substantial discipline. It was a more serious matter than a previous incident involving other employees who had been drinking while subject to duty. In my view, the assessment of 40 demerits was justified in the case of each of the grievors, except Mr. Scherm. It is clear from all the material before me that Mr. Scherm reported ready and willing for work, and that he did not drink at all until it was quite clear there would be no work done. He drank very little! and went home at noon. The Company's statement that "all of the grievors have agreed with Mr. DeRosier that they were intoxicated when he arrived at 1305" is not correct with respect to Mr. Scherm. While Mr. Scherm is subject to some discipline in the matter, he was to a considerable extent the victim of circumstances over which he appears to have had no control. The penalty assessed him should, in my view, be reduced to one of 10 demerits.

For the foregoing reasons, the grievances of Messrs. Jones, Brighton and Moorwood are dismissed. The penalty assessed against Mr. Scherm is reduced to 10 demerits.

J. F. W. WEATHERILL,
ARBITRATOR.