

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1127

Heard at Montreal, Wednesday, July 6, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Eastern Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

On August 12, 1982, Mr. K. Berry was absent from work as Helper on Tie Crane. August 17, 1982, he was held out of service and following investigation was assessed 40 demerits for violation of General Rule "S" and dismissed for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. Mr. Berry was absent from work account having to see a Doctor for infected wisdom teeth.
2. The discipline for being absent from work August 12, 1982, was unwarranted, account he was off due to sickness.
3. The 40 demerits be removed, Mr. K. Berry to be reinstated as Machine Helper and paid wages from August 17, 1982, and onward at the Helper's rate of pay.
4. All seniority rights he had prior to August 12, 1982, be restored.

The Company declines payment and denies the Union's contention.

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

(SGD.) P. A. PENDER
FOR: General Manager,
Operation and
Maintenance

There appeared on behalf of the Company:

P. A. Pender - Supervisor Labour Relations, CPR, Toronto
R. A. Colquhoun - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen - System Federation General Chairman, BMWWE,

Ottawa
F. L. Stoppler - Vice-President, BMW, Ottawa
L. DiMassimo - Federation General Chairman, BMW, Montreal
E. J. Smith - General Chairman, BMW, London

AWARD OF THE ARBITRATOR

The grievor was absent from work on August 12, 1982. On the material before me, his absence was due to an infected wisdom tooth, with respect to which he went to see a doctor. That was, I think, justification for his absence.

The grievor did not, however, notify the Company that he would be absent. The grievor well knew that it was his responsibility to do so (a full crew is expected and replacements are not available), and there seems no doubt that he had ample opportunity to do so, had he not "simply neglected to inform the Supervisor". The grievor was, I find, subject to discipline on that account. The only issue of substance is as to the severity of the discipline imposed.

The grievor, who had been hired on August 1, 1981, and who worked on a seasonal basis, had several entries for the same offence on his discipline record at the time, and had accumulated 40 demerits. It is not the case that his record consisted of one entry, of 40 demerits assessed in respect of a violation of Rule "S" (relating to absence without permission), on July 20, 1982. Rather, the grievor's record shows that he was assessed 10 demerits for such an offence on May 4, 1982; a further 10 demerits for a similar offence on June 30, 1982; and then 20 demerits for the offence of July 20. While I do not consider that the doubling of the number of demerits assessed, for the repetition of an offence, is a necessary aspect of the system of discipline in effect, there can be no doubt that some increase is justified in most cases. In the instant case, while I consider 40 demerits to be excessive, I have no doubt that the assessment of at least 20 demerits was justified. In any event, then, the grievor had accumulated 60 demerits and was subject to discharge.

Accordingly, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.