

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1129

Heard at Montreal, Wednesday, July 6, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Prairie Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The Union alleges that on June 18, 1982, D. G. Gaulton and D. B. Kearley were dismissed for unauthorized use of Company vehicle while on R.C.O. Gang.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The dismissal is not warranted as no investigation was held as required in Section 18.1, Wage Agreement 41.
2. That the employees be reinstated to their positions and compensated for wages lost since June 18, 1982.

The Company denies the claim and declines payment.

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

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

There appeared on behalf of the Company:

R. A. Falzerano - Assistant Supervisor, Labour Relations, CPR,
Winnipeg
R. A. Colquhoun - Labour Relations Officer, CPR, Montreal
H. E. Schroeder - Roadmaster, Prairie Region, CPR, Winnipeg
R. A. Graham - General Foreman, Brandon Division, CPR,
Brandon

And on behalf of the Brotherhood:

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

As a result of an incident which occurred on June 17, 1982 Mr. Gaulton was advised, early on June 18, that he was "finished work" - in effect, that he was discharged. No such advice was ever given to Mr. Kearley, who had been involved with Mr. Gaulton in the incident of the 17th.

Subsequently on June 18, management at the gang headquarters was advised that the Collective Agreement required that there be a formal investigation before any such discipline could be imposed. The "discharge" of Mr. Gaulton was of course a nullity. Thus, on June 19, Mr. Gaulton was told that he was not discharged, but that he was being held out of service pending investigation into the incident of the 17th. Mr. Kearley was instructed to report for work on June 19, although it appears that he did not do so. On June 21, Mr. Kearley was advised that he too was being held out of service pending investigation. Later that day, the Roadmaster had a discussion of the incident with the two grievors, indicating that he would see them the following day for further discussion. There was, however, no such discussion on June 22, as the grievors left the area that day - apparently without notice to the Company - and returned home.

There was never an investigation held with respect to the incident of June 17. The grievors could not, then, have been dismissed on that account. Any purported dismissal would be invalid, as was the case with the purported dismissal of Mr. Gaulton on the 18th, later revoke. The grievors remained employees at the material times.

There is, however, no ground for ordering "reinstatement" or compensation for the grievors in this case. The grievors' records were closed sometime after the events in question on the ground that they had abandoned the Company's service. That might be considered not so much a disciplinary matter as recognition of a state of fact. However that may be, the issue in this grievance is whether or not the grievors were dismissed over the incident of June 17. If they had had been "dismissed" then as I have indicated they would have been wrongly dismissed. They were not dismissed however, and so there is no issue to be determined in that respect.

Accordingly, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.