

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1274

Heard at Montreal, Tuesday, September 11, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. H. Wood, B&B Foreman was assessed 20 demerits for condoning the use of improper equipment for an assignment at hand, resulting in injury to employee, a violation of Rules 170, 178, 179 and 180, of Form 568, mileage 24.4, Shuswap Subdivision, September 27, 1983.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. Deputy Bridge and Building Master Mr. DeRosier was present at the work site prior and during the accident and did not instruct Foreman H. Wood to discontinue using the cart for hauling planks.
2. The 20 demerits be removed in their entirety.

The Company declines the Union's contention.

FOR THE BROTHERHOOD:

(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:

D. N. McFarlane - Asst. 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. Y. Gaudreau - Vice-President, BMWE, Ottawa  
L. M. DiMassimo - Federation General Chairman, BMWE, Montreal  
V. Dolynchuk - General Chairman, BMWE, Edmonton

AWARD OF THE ARBITRATOR

The uncontradicted evidence demonstrated that the Grievor, Foreman H. Wood, condoned the use by employee members of his crew of a cart for a purpose for which it was not designed. The result of the use of that cart where the "Nolan" cart was more suitable for the transport of wood planks precipitated an accident to an employee member of the gang causing him serious injury.

It is no answer to Mr. Wood's improper use of company equipment that his instructions with respect to loading the wood planks were not followed. Indeed, such evidence merely supports the company's requirements that appropriate equipment should be used for a particular task. Moreover, the evidence does not disclose that any member of management (Mr. DeRosier) condoned Mr. Wood's improper practice. If anything, the company in removing the designated safety inspector from his functions on account of this incident has demonstrated its concern for the strict adherence to safe procedure.

Because of the added responsibilities discharged by Foreman Wood in his supervisory capacity, I am satisfied for the reasons advanced that twenty demerit marks is an appropriate penalty having regard to the ten demerit marks imposed upon the members of his crew for the same infraction. For all the foregoing reasons the grievance is denied.

DAVID H. KATES,  
ARBITRATOR.