

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1332

Heard at Montreal, Wednesday, February 13, 1985

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Pacific Region)
and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

On March 21, 1984, at 2220 the crew on Train Extra 8822 South reported finding the north switch at Brant, Alberta, open and lined for the siding. Track Maintenance Foreman Mr. W. Gorzitza was demoted to Trackman for one year for violation of Rules 8, 12, 74(a), 171 and 196, Form 568, Maintenance of Way Rules and Instructions, Rule 104, paragraphs 1, 2 and 3, Uniform Code of Operating Rules and Superintendent's bulletined instructions.

JOINT STATEMENT OF ISSUE:

The Union contends that the discipline assessed is excessive and requests Mr. Gorzitza be returned to his position of Track Maintenance Foreman at Vulcan, Alberta, and paid for time held out of service and the difference in rate of pay from Trackman to Track Maintenance Foreman.

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

FOR THE UNION:

FOR THE COMPANY:

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

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

There appeared on behalf of the Company:

F. R. Shreenan - 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 - General Chairman, BMWE, Montreal

AWARD OF THE ARBITRATOR

The statement obtained from the grievor, Track Maintenance Foreman,

W. Gorzitza, contains an admission that he was delinquent in the performance of his supervisory duties in omitting to check that his crew had ensured that the north switch at Brant, Alberta, had been properly lined for main track traffic. In this regard, the grievor was shown to have violated a reasonable company rule requiring "foremen to personally supervise work in their charge and see that it is carried out in accordance with (appropriate) standards.."

Accordingly there is no issue as to the grievor's committal of an infraction warranting discipline.

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The sole issue raised is whether a one year demotion to the Trackman's position is an appropriate penalty in all the circumstances.

Based on the unsettling experience of the grievor's involvement in the search, transfer and custody of a dead body found on the track during the course of the crew's shift earlier that day I am persuaded that a mitigating circumstance has been shown that ought to have been considered by the employer in the severity of the imposed discipline. I am very much influenced in this finding by the remarks contained in Dr. Proudfoot's letter dated April 18, 1984, indicating that that experience "was very unnerving and distracting" and would explain the grievor's neglect of his supervisory duties. In this regard, I am satisfied that in light of the grievor's impeccable record that this episode was an isolated aberration that is not likely to be repeated when reinstated to his regular position.

Accordingly, I am of the view that the one year's demotion should be reduced to three months. The grievor is entitled to compensation for monies lost in the interim period. I shall remain seized.

DAVID H. KATES,
ARBITRATOR.