

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1384

Heard at Montreal, Tuesday, July 9, 1985

Concerning

CANADIAN PACIFIC LIMITED (CP Rail)  
(Prairie Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. G. E. Smith, Track Maintenance Foreman, was debited with 35 demerits for violation of Rule 170, General Rules for Foremen, Maintenance of Way Rules and Instructions, Wilcox, Saskatchewan, April 9, 1984.

JOINT STATEMENT OF ISSUE:

The Union contends that Mr. G. E. Smith did not violate Rule 170, Maintenance of Way Rules and Regulations and request the discipline be removed from his record.

The Company declines the Union's request.

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

(SGD.) D. A. LYPKA  
FOR: General Manager,  
Operation &  
Maintenance

There appeared on behalf of the Company:

J. D. Champion - Supervisor, Labour Relations, CPR, Winnipeg  
R. E. Noseworthy - Asst. Supervisor, Labour Relations, CPR,  
Winnipeg  
R. A. Colquhoun - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen - System Federation General Chairman, BMW, Ottawa  
R. Y. Gaudreau - Vice-President, BMW, Ottawa  
L. M. DiMassimo - Federation General Chairman, BMW, Montreal  
E. J. Smith - General Chairman, BMW, London

AWARD OF THE ARBITRATOR

Rule 170 of the Maintenance of Way Rules and Regulations provides in part:

"Foremen are in charge of and responsible for the number of men authorized, and must see that the men understand and properly perform their duties."

The company often engages in "spot" checks of their maintenance crews to ensure that the duties assigned them are performed. In the most part crews remain unsupervised during the performance of a days work. As a result the company relies on its foremen to make certain that a days work is done for the monies earned by the crew members under their supervision.

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During the course of a "spot" check it was determined that Track Maintenance Foreman G. E. Smith and three members of his crew were not working or otherwise engaged in the duties of their position for approximately one hour and fifty minutes. The members of the crew were assessed 25 demerit marks for their violation of Rule S, Maintenance of Way Rules and Instructions. They did not elect to challenge the propriety of the discipline that was imposed. Rule S provides:

"Employees must not, without permission, absent themselves from duty during prescribed hours, exchange duties with others, or engage substitutes."

The grievor was not disciplined for a violation of Rule S' Rather, his misconduct pertained to the breach of his duty as a Track Maintenance Foreman in ensuring that the crew members under his supervision "properly performed their duties".

In language that is easily comprehensible to everyone concerned, a work crew's "goofing off" in sitting in a bunkhouse is not ensuring that those employees are properly performing their duties. Indeed, whether the amount of time spent in an unproductive endeavour is 30 minutes as alleged by the trade union or 110 minutes as alleged by the company, the grievor's principal duties as a Track Maintenance For man is to protect the employer from being cheated. As the sole management representative at the work site the grievor was entrusted with the duty of making sure that his crew performed the duties for which they were being paid. In omitting to ensure this, the grievor was properly disciplined for his misconduct.

Accordingly, for breach of his supervisory duties I am satisfied the grievor deserved a more severe penalty than assessed the members of his crew for failing to take measures to prevent their delinquency.

As a result, the assessment of 35 demerit marks was warranted and the grievance is dismissed.

DAVID H. KATES  
ARBITRATOR.