

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1472

Heard at Montreal, Wednesday, February 12th, 1986

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. C.G. O'Brien, Carpenter, Revelstoke, B.C. Division, was dismissed for deliberately attempting to defraud Company by falsifying information on Form 513, making claim for expenses not incurred in February 1985, Form 140.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. Mr. C.G. O'Brien did not deliberately falsify expense accounts as claimed
by the Company.
2. The discipline is too severe and Mr. O'Brien be reinstated without loss of seniority and compensated for loss of wages and benefits while held out of service.

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

FOR THE BROTHERHOOD:

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..

R.T. Bay	Asst. Supervisor Labour Relations, CPR, Vancouver
R.A. Colquhoun	Labour Relations Officer, CPR, Montreal
G.J. Ewenson	Division Engineer, CPR, Revelstoke

And on behalf of the Brotherhood:

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

On consent of the employer, the trade union's request for an adjournment was granted.

It is understood that the adjournment is without prejudice to the employer should the grievor succeed in his grievance.

DAVID H. KATES
ARBITRATOR

On Tuesday, May 13TH, 1986, there appeared on behalf of the Company:

R. T. Bay - Assistant Supervisor, Labour Relations, CPR,
 Vancouver
G. Ewenson - Division Engineer, CPR, Revelstoke
R. A. Colquhoun - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen - System Federation General Chairman, BMW, Ottawa
L. M. DiMassimo - Federation General Chairman, BMW, Montreal
E. J. Smith - General Chairman, BMW, London

AWARD OF THE ARBITRATOR

The issue raised in this case is whether the grievor intended to defraud the company by submitting an expense account for February 1985 for the payment of services that he had not received.

The culminating incident pertained to the grievor's claim for expenses for the month of February, 1985. There is no dispute that the grievor claimed expenses during that month for which he was not entitled to repayment. These incidents pertained to meal and car allowances that were not justified. For example, in one claim for a car allowance for his alleged travels between the work site and his residence the grievor also claimed on the same day a hotel allowance.

The trade union's position is that the grievor is not a thief. Rather, it is submitted that he simply cannot accommodate himself to submitting proper expense statements under the employer's present system. There is no dispute that the grievor does have a long history of failing to adhere to the requirements imposed by the company for submitting proper expense accounts. His most recent encounter resulted in a 20 demerit mark penalty for the inaccurate expense account that was submitted for November 1984.

The employer's practice is to give an employee a \$500.00 advance for use during the course of a month. At the end of the month the employee is required to submit a statement of his expenses. Appropriate payment is then made to maintain that balance at the start of a new month at \$500.00. Should the employee's expenses during a month require him to spend his own monies then the company makes the the requisite payment.

As hitherto indicated, the many mistakes made by the grievor in his submission of his monthly statement for February, 1985 were admitted. On each occasion during his disciplinary investigation that he was confronted with a discrepancy he recognized his mistake and asked the company to make the necessary correction. What appeared to alert the company to the concern that these shortcomings were not merely mistakes but something more serious was a gratuitous statement made by the grievor. In response to a question as to why he made so many mistakes in his statement the grievor stated that he "still felt he was being hosed by the company".

Despite the adjournment that was granted the trade union, with the company's consent at the first scheduled day of hearing of this case, the trade union did not see fit to call Mr. O'Brien to adduce evidence in order to provide me with an explanation of what he meant by that remark. The company submitted of course, that the grievor meant that he felt he was being cheated under the company's system for submitting expense accounts and that he was therefore getting even by making false claims for monies that were not spent.

The trade union suggested that the grievor was simply confused by that system and more particularly was encountering extreme difficulty in maintaining the \$500.00 balance

The company insisted that as early as September, 1984, the grievor had been given two \$500.00 cheques in advance. Any confusion that related on that account had been clarified in February, 1985 when the grievor was interviewed with respect to the erroneous statement that was made in relation to his November 1984 expenses. To be perfectly clear at his interview of February 20, 25, 1985, the grievor was presented with two cancelled cheques evidencing his receipt of a total of \$1,000.00. Moreover, at that time, his accounts were straightened out. Accordingly, he would have no apparent excuse for any subsequent misunderstanding in March 1985 with respect to his accounting for those advances.

Yet, shortly thereafter, the grievor submitted an expense statement for February, 1985 that contained the admitted incidents of erroneous claims.

The explanation for the grievor's alleged confusion for that month, as argued by the trade union, had already been clarified and dealt with.

In my view the only explanation for the grievor's inability to account for his mistakes must be attributed to the statements that he expressed during his interview relating to his complaints of shortages of money to meet his hotel and other expenses. He obviously spent the money hitherto advanced him by the company for his own purposes. When confronted with these expenditures it appears that he felt compelled to contrive fictitious claims to finance his spending habits. And, the basis or rationalization for his having engaged in this savoury practice was attributed to the notion that the company "was still hosing him". In short I have concluded that the evidence, as adduced in the parties' briefs can only lend itself to that one conclusion.

Accordingly, I am compelled to deny the grievance.

DAVID H. KATES,
ARBITRATOR.