

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1515

Heard at Montreal, Tuesday, May 13, 1986

Concerning

CANADIAN PACIFIC LIMITED  
CP RAIL INTERMODAL

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES  
BOARD OF ADJUSTMENT #14

DISPUTE:

Claim for removal of 25 demerit marks from G. Cloutier's discipline record and claim for wages lost during four-day period employee was withheld from service pending investigation.

JOINT STATEMENT OF ISSUE:

On August 29, 1985, employee G. Cloutier was removed from service pending investigation, which was subsequently held on September 3, 1985 concerning his refusal to operate top lifter 8501 on August 28, 1985. Based upon the results of the investigation the Company debited Mr. Cloutier's discipline record with 25 demerit marks.

The Brotherhood filed a grievance under Article 28.1 of the Collective Agreement. Since the Company did not respond within the prescribed time limits at Step 3 in the grievance procedure the Brotherhood claims the grievance should succeed account the contents of Article 28.4.

Further, the Brotherhood maintains that the four-day period being withheld from service, in addition to the 25 demerit marks, is excessive considering that G. Cloutier has 23 years of seniority with the Company, and that he had a clean disciplinary record at the time of the incident.

The Company maintains the employee was properly withheld from service pending investigation and that the 25 demerit marks were warranted based upon the results of the investigation.

Further, the Company contends that Article 28.4 in the Collective Agreement is not applicable in this instance since a wage claim as contemplated in Article 28.4 is not at issue.

The Company denied the grievance.

FOR THE BROTHERHOOD:

(SGD.) D. J. BUJOLD

FOR THE COMPANY:

(SGD.) G. C. McDONALD

FOR: General Chairman  
BRAC Division No. 14

Assistant General Manager,  
Operations.

There appeared on behalf of the Company:

W. D. Campbell	- Supervisor Sales Administration, CPR, Intermodal Services, Lachine
G. E. Sarrazin	- Terminal Manager, CPR, Intermodal Services, Lachine
P. E. Timpson	- Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

J. Germain	- Vice-General Chairman, BRAC, Montreal
J. Manchip	- General Chairman, BRAC, Montreal
D. J. Bujold	- Vice General Chairman, BRAC, Toronto

#### AWARD OF THE ARBITRATOR

The grievor was asked by his foreman on three separate occasions to operate a machine which he refused to do. His refusal was based on his perceived entitlement to be paid a higher rate for the work performed. As I understood the dispute the grievor wanted assurances of payment at the superior rate as a condition precedent for obeying his superior.

This case, as submitted by the employer, represents a classic example of where "the obey now, grieve later" rule should have applied. The trade union did not seriously contest the notion that the grievor was insubordinate and therefore was subject to discipline.

The issue that must be resolved is whether the combined discipline of 25 demerit marks as well as keeping the grievor "out of service for four days pending his investigation was too severe a penalty for the grievor to have endured. It is common ground that the grievor is a long service employee (23 years seniority) with an impeccable record. The evidence clearly disclosed that this incident represented an isolated aberration.

In that light, I am satisfied, in accordance with the standards for discipline established in the CROA precedents referred to by the company in its brief, that twenty-five demerit marks by itself represented an appropriate disciplinary penalty.

The additional four day suspension for the period the grievor was held out of service appears to me to be somewhat excessive for a first, albeit serious, infraction.

Insofar as the trade union's technical argument with respect to Article 28.4 is concerned I am satisfied, (although it is unnecessary for me to so hold) that the pronouncements made in CROA Case #507 continues to represent a sound and correct interpretation of that provision.

As a result the grievance is denied except with respect to the four day period that the grievor was kept out of service. The company is directed to compensate the grievor accordingly and I shall remain seized for that purpose.

DAVID H. KATES ,  
ARBITRATOR .