CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1520

Heard at Montreal, Tuesday, June 10, 1986

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. M. Fitch, Machine Operator was assessed 40 demerits for being absent from duty without proper authority, violation of General Rule S. Form 568, Maintenance of Way Rules and Instructions on August 9, 1985, and dismissed for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The Company violated the policy on employee attendance improvement program.

2. The discipline assessed is too severe and not warranted.

3. Mr. Fitch be reinstated to his position as machine operator, seniority restored, and be paid for all lost wages and benefits since August 9, 1985.

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

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) H. J. THIESSEN	(SGD.) L. A. HILL
System Federation,	General Manager,
General Chairman	Operation and Maintenance

There appeared on behalf of the Company:

R. T. Bay	- Asst. Supervisor Labour Relations, CPR, Vancouver
T. L. Dragland	- Supervisor, B.C. Tie Gang, Pacific Region, CPR
R. A. Colquhoun	- Labour Relations Officer, CPR, Montreal
G. W. McBurney	- Asst. Supervisor, Labour Relations, CPR, Winnipeg, Observer

And on behalf of the Brotherhood:

H. J. Thiessen	- System Federation General Chairman, BMWE, Ottawa

L. M. DiMassimo - Federation General Chairman, BMWE, Montreal
R. Y. Gaudreau - Vice-President, BMWE , Ottawa

AWARD OF THE ARBITRATOR

As the Joint Statement of Issue indicates the issue before me is whether the grievor should have been assessed 40 demerit marks for his failure to report for work on August 9, 1985, contrary to General Rule S, Form 568, Maintenance of Way Rules. That incident resulted in the grievor's termination because of his accumulation of sixty demerit marks.

The culminating incident represented merely one incident of like infractions over a period of less than 12 months. The grievor was verbally warned on two occasions with respect to his attendance problem. He was then disciplined for two successive incidents relating to his reporting difficulty. Apparently, the grievor's omission in each case related to his habit of consuming alcohol the evening before his scheduled hour of reporting for work.

On the face of record the company has provided proof of a prima facie case for discharge. That is to say, the grievor has shown himself to be unreliable to the extent that the company cannot count on his regular attendance. This clearly created a productivity problem that the company should not have to tolerate.

In the light of this finding I am of the view that the onus shifted to the trade union to adduce evidence with respect to the mitigation of the discharge penalty.

The trade union stressed that the company failed to comply with its own policy in dealing with its employees' attendance problems as expressed in its "Guide to the Employee Attendance Improvement Program". That program contains a policy with respect to "discussion" of the attendance problem with the employee, "verbal warnings" with respect to infractions and ultimately to "disciplinary action". In this case the trade union suggested that there was no "documentation" relating to any "discussion" or "verbal warnings" and, more particularly, there was no written "improvement programme" that was designed to assist the grievor in overcoming his problems.

The truth of the matter is that the record shows that there was substantial compliance on the company's part with the aforesaid guideline. The program is intended only as a guideline. And, for the program to work there must be "discussion". Discussion suggests to me that it is "a two way street". The employee must be forthcoming in confessing in a candid manner the reason or reasons for his poor timekeeping. It is only through that avenue that a program for rehabilitation can then be devised.

At the hearing both the trade union and employer indicated that notwithstanding the evidence that demonstrated that the grievor's infractions were rooted in an excessive consumption of alcohol, they did not know whether the grievor had "a drinking problem".

And quite clearly, if alcohol abuse was a problem, then the onus rested on the grievor to advance that at the meeting he had with the

company's representatives for purposes of invoking the EAP program. Or, if alcohol abuse was not the problem, then what was the explanation?

In other words, if the grievor does not provide an explanation for his reporting difficulty, then the company is clearly inhibited from constructing a program for his rehabilitation. As a result the only "program" that is left for the employer to rely upon for purposes of correction is the policy of "prograssive discipline" as outlined under "The Brown System".

As a result since no viable defense was raised by the trade union in answer to the company's prima facie case for discharge, I am satisfied that the grievance should be dismissed.

DAVID H. KATES,
ARBITRATOR.