

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1594

Heard at Montreal, Wednesday, December 10, 1986

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Prairie Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

On May 31, 1985, Mr. R. L. MacDonald, B & B Foreman, was assessed 10 demerit marks for incorrect submission of April 1985 personal expense account Form 140, and 30 demerit marks for failure to comply with the instructions of Supervisors.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The discipline assessed Mr. MacDonald is not warranted and all discipline be removed.
2. Mr. MacDonald be reinstated as B & B Foreman and paid for any loss in salary since May 31, 1985, and expenses as provided in Section 18, Wage Agreement No. 41.

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

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

(SGD.) E. S. CAVANAUGH
General Manager,
Operation and Maintenance

There appeared on behalf of the Company:

D. A. Lypka	- Supervisor Labour Relations, CPR, Winnipeg
G. W. McBurney	- Asst. Supervisor Labour Relations, :CPR, Winnipeg
R. A. Colquhoun	- Labour Relations Officer, CPR, Montreal
M. K. Couse	- Asst. Supervisor Labour Relations, CPR, Toronto

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

I consider firstly the allegation that the grievor was insubordinate and disregarded clear instructions from his Supervisor. I am satisfied that Mr. MacDonald was told on April 26, 1985 that while working at the Bridge at Mileage 59.5 Altawan Subdivision he was to house himself and his crew at the Consul Hotel in the town of Consul, some three miles distant. In fact because he did not find the accommodation suitable, Mr. MacDonald arranged for accommodation for his crew at East End Saskatchewan, some 35 miles away from the work site. It appears, however, that the communication between Mr. MacDonald and Assistant Bridge and Building Master Anderson was less than clear. According to the account of Foreman T. C. Scott which the Arbitrator accepts, while Anderson instructed MacDonald that he and his crew were to stay at the Consul Hotel, when MacDonald objected to the inadequacy of the accommodation Mr. Anderson apparently made no response. Having regard to the quality of the evidence, and in particular to the statement of Mr. Gallant that he was placed under some pressure by Mr. Anderson with respect to his own testimony to the extent that it might support the grievor, the Arbitrator has some difficulty resolving any doubt about this aspect of the case in favour of the Company.

On the whole of the material I must conclude that the initial instruction to Mr. MacDonald was not sufficiently clear to convey to him that as Crew Foreman he was not free to choose alternate accommodation as apparently had occurred in the past. His initial failure to comply with Mr. Anderson's instruction, therefore, cannot be viewed as blameworthy.

However, it should soon have become clear to Mr. MacDonald that he had misunderstood his instructions. It appears undisputed that on April 30, 1985 that he was informed by telephone, by B&B Master D. M. Green, that he was instructed to stay at the hotel at Consul. He nevertheless remained at the Riverside Motel in East End on the night of that same day. The next day, on May 1, 1985, he was again explicitly directed by Mr. Anderson to stay in Consul. Notwithstanding that directive, and the fact that Anderson cancelled the crews' accommodation at the Riverside Motel, the grievor moved himself and his crew into the Cyprus Hotel in East End. While it is clear that Mr. MacDonald had strong objections about the quality of accommodation at Consul, it is equally obvious that he had unequivocal instructions which he deliberately refused to follow, at least as of May 1, 1985. In the material before the Arbitrator, the Union has not established that the proposed accommodation was so unacceptable as to give rise to an exception to the "work now, grieve later" rule, although it does appear that subsequent events have raised some question about the quality of food and accommodation at Consul. In all of the circumstances, and having particular regard to the evidence of Mr. Gallant, the Arbitrator deems it appropriate to substitute the imposition of 15 demerit marks against the grievor in respect of the events of late April and early May 1985.

The second allegation concerns the purported falsification of Mr. MacDonald's expense account in April of 1985. It is undisputed that he claimed expenses in the amount of \$15.00 per day for meals in respect of April 1, 2, 3, 4 and 8, notwithstanding that he was not at work on those days due to illness. On a careful review of the record

the Arbitrator is satisfied that the grievor's explanation that this was an error on his part and not a deliberate fraud should be accepted. There was plainly no attempt on his part to falsify his time sheets. Contrary information on his time sheets would virtually assure detection of the discrepancy in his expense claim. It also appears that the grievor's expense account was filed on April 30, 1985, some three weeks after the days in question. On the whole the Arbitrator is satisfied that the erroneous claim was an oversight on his part.

That conclusion, however, does not mean that Mr. MacDonald was entirely without fault. It was plainly his responsibility to submit accurate and supportable expense claims for the period in question. His failure to do so obviously constituted a derilection of duty deserving of some discipline. The 10 demerit marks assessed by the Company are based on a supposition of deliberate deceit by the grievor. In the circumstances, the Arbitrator is satisfied, given that the claim was in fact due to a lack of care on the grievor's part, 5 demerit marks would be the appropriate measure of disciplinary response.

For the foregoing reasons the grievor's disciplinary record shall be adjusted to reflect an assessment of 20 demerit marks in substitution of the total of 40 demerit marks registered against him. I retain jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this decision.

MICHEL G. PICHER,
ARBITRATOR.