

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1639

Heard at Montreal, Wednesday, April 15, 1987

Concerning

CANADIAN PACIFIC LIMITED (CP Rail)
(Pacific Region)

and

CANADIAN SIGNAL AND COMMUNICATIONS UNION

DISPUTE:

On February 28, 1986, Mr. B. C. Burkitt was assessed 40 demerit marks.

JOINT STATEMENT OF FACT:

The Company assessed the following discipline to Mr. Burkitt on February 28, 1986 by way of Form 104.

"40 demerit marks for claiming false automobile mileage expenses between- Edmonton and Bassano, November 1 and November 4, 1985 and for charging hotel room expenses to the Company while on personal business, without authorization, November 2 and November 3, 1985 at Edmonton, Alberta."

JOINT STATEMENT OF ISSUE:

"The Union contends the discipline assessed was excessive and unwarranted and should be removed from Mr. Burkitt's record. The Company denies the Union's contention and submits that the discipline was just and warranted."

FOR THE UNION:

(SGD.) JOHN E. PLATT
National President

FOR THE COMPANY:

(SGD.) L. A. HILL
General Manager
Operation and Maintenance

There appeared on behalf of the Company:

F.R. Shreenan - Supervisor, Labour Relations, Vancouver
R.A. Colquhoun - Labour Relations Officer, Montreal

And on behalf of the Union:

J.E. Platt - President, CSCU, Ottawa
A.B. Vigneault - Assistant, Montreal

AWARD OF THE ARBITRATOR

The 40 demerits assessed against Mr. Burkitt were imposed by the

Company for two reasons: firstly, for a false automobile mileage claim and secondly for making use of a hotel room in Edmonton over the course of a weekend without authorization. On the material before the Arbitrator, it appears that the practice of allowing Signal and Communications Foremen, which the grievor is, to retain a hotel room over a weekend, sometimes as a shelter in inclement weather or as a place of dry storage for a gang's work clothing, is relatively unclear. In the circumstances, the grievor plainly did not attempt to conceal from the Company that he made use of the hotel room on the dates in question, since that was obviously disclosed, as it would have to be, in the bill submitted to the Company directly by the hotel. On the whole, having particular regard to the uncertainty of the evidence respecting the past practice, I am not satisfied that the Company has discharged the burden of proof in respect of the grievor's use of the hotel on the weekend in question.

The same is not true, however, of his claim for mileage. The grievor admittedly submitted a mileage claim for a trip from Edmonton to his home in Bassano, return, for the weekend in question, when in fact he never left Edmonton. In explanation of his actions he states that he believed the mileage allowance was an absolute entitlement which could be claimed whether or not the employee chose to travel. There is nothing in Appendix 10 to the Collective Agreement, the letter of understanding dated May 29, 1985, governing weekend travel assistance to suggest or support the understanding purportedly held by the grievor. Nor is there any evidence of any local prior practice by the Company whereby a travel allowance was ever paid to employees whether or not travel was in fact undertaken. Even assuming that the grievor believed in good faith that the policy permitted him to claim the mileage in question, I cannot find on the material before me that he had any reasonable basis for that belief.

In the circumstances, the Company had just cause for the imposition of some discipline. As noted, however, the Company's allegations with respect to wrongdoing in the use of the hotel room is not established. It also appears that the grievor had no prior disciplinary record for the entirety of his employment with the Company since October of 1979. In all the the circumstances, and having particular regard for his prior record, I find that 25 demerits is an appropriate measure of disciplinary response.

The grievance shall therefore be allowed in part, and the grievor's record amended to reflect the imposition of no demerits with respect to the use of the hotel on November 2 and 3, 1985 and 25 demerits for his wrongful claim of automobile milcage expenses for November 1 and 4, 1985.

MICHEL G. PICHER
ARBITRATOR