

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1663

Heard at Montreal, Tuesday, July 14, 1987

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. P.A. Enright, Machine Operator, was assessed 30 demerits for violation of Circular 6, Item 13, Standard Practice Circular form 3806 (second event) and dismissed for accumulation of demerits, June 18, 1986.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The discipline assessed is not warranted and should be removed. Section 18.5, Wage Agreement 41.
2. Mr. Enright be reinstated with all seniority and compensated for loss of wages from date held out of service to date of reinstatement at the rate he could have earned.

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

FOR THE COMPANY:

(SGD.) J.M. WHITE
General Manager
Operation & Maintenance, West

FOR THE BROTHERHOOD:

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

There appeared on behalf of the Company:

B. Mittleman	- Solicitor, CP Rail, Montreal
M. Shannon	- Solicitor, CP Rail, Montreal
R.T. Bay	- Assistant Supervisor, Labour Relations, Vancouver
J. Klett	- B&B Master, Revelstoke
R.A. Colquhoun	- Labour Relations Officer, Montreal
L. Wormsbecker	- Observer, Montreal

And on behalf of the Brotherhood:

M. Gottheil	- Assistant to Vice-President, Ottawa
H.J. Thiessen	- System Federation General Chairman, Ottawa
L. DiMassimo	- Federation General Chairman, Montreal
R. Della Serra	- General Chairman, Montreal

AWARD OF THE ARBITRATOR

The grievor commenced employment with the Company on August 3, 1982. In fact, while he has four years' seniority, because of layoffs his accumulated working service is only slightly over three years. The material establishes that he was involved in a prior collision as a result of his failure to properly control the operation of a junior tamper on June 27, 1983. Twenty demerits were assessed for that infraction. Thereafter, 20 demerits and 25 demerits were assessed for the use of abusive language to a supervisor on September 30, 1983 and willful damage to private property, on June 1, 1985, respectively.

By any standard the grievor's record is not impressive. The incident leading to his discharge was the result of admitted negligence on his part. On May 15, 1986, Mr. Enright was operating a ballast regulator, a piece of heavy equipment weighing in excess of 20 tons which runs on the track and is used to spread chipped rock for roadbed maintenance. While moving the machine to clear into a siding at Montana, because of his failure to look ahead, Mr. Enright ran his ballast regulator into a track liner which was stopped on the track. Fortunately no injury or substantial damage to the equipment resulted.

The issue is whether in these circumstances the assessment of 30 demerit marks was appropriate. The Arbitrator can find few, if any, mitigating factors to assist the grievor. This is the second equipment collision for which he has been responsible in a relatively short period of service. As noted, his record over his entire period of employment is not positive. There is little to suggest that the imposition of prior discipline has had any meaningful impact towards rehabilitating the grievor or raising the standard of care which he brings to his work. Needless to say, the degree of vigilance required of those responsible for the movement of heavy equipment on the Company's track is necessarily high. In all of the circumstances the Arbitrator must conclude that the imposition of 30 demerits was within the appropriate range of disciplinary response, and that no compelling grounds are made out for the substitution of a lesser penalty. For the foregoing reasons the grievance must be dismissed.

MICHEL G. PICHER
ARBITRATOR