

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.1717

Heard at Montreal, Wednesday 11 November 1987

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The dismissal of Machine Operator Mr. L. D. Lougheed on October 7, 1986.

JOINT STATEMENT OF ISSUE:

The grievor, M. L. D. Lougheed, was dismissed for

"reporting for your tour of duty as a Machine Operator in an unfit condition and operation of a self-propelled track machine (Anchor Squeezer, Unit 3011-23) in a dangerous manner, resulting in uncontrolled crossing of a roadway crossing, collision with another self-propelled track machine and personal injury to yourself, a violation of Rule 6D, Form 300-1, Rules 2 and 69, Form 568 and Item 13 of SPC No. 6 - Work Equipment, Mileage 27.7, Minnedosa Subdivision, September 26, 1986."

The Union contends that:

1. Mr. L. D. Lougheed was not unfit for duty, nor was he blatantly negligent.
2. Dismissal is not justified in this instance and Mr. Lougheed be reinstated with all seniority rights and compensated for loss of wages and benefits from September 26, 1986 and onward, as provided in Section 18.4 of Wage Agreement No. 41.

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

FOR THE COMPANY:

(SGD) E. S. CAVANAUGH
General Manager
Operation & Maintenance

FOR THE BROTHERHOOD:

(SGD) M. L. McINNIS
System Federation
General Chairman

There appeared on behalf of the Company:

B. L. Mittleman	- Counsel, Montreal
G. McBurney	- Assistant Supervisor, Labour Relations Winnipeg
Henry James	- Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

M. Gottheil	- Assistant to Vice-President, Ottawa
M. L. McInnes	- System Federation General Chairman Ottawa
L. M. DiMassimo	- Federation General Chairman, Ottawa

AWARD OF THE ARBITRATOR:

The material establishes that the grievor failed to pay adequate attention while operating a self-propelled track machine, resulting in a collision, damage to Company equipment and Mr. Loughheed's hospitalization. On the material before me I cannot conclude that the grievor was asleep for a sustained period of time, as was the case in C.R.O.A. 1685. On the whole, however, I am satisfied that the grievor was inattentive, due in part to fatigue brought on by inadequate sleep the night before.

The grievor has no prior disciplinary record. Having regard to this fact, as well as to the discipline meted out in a number of comparable cases cited by the Union, the Arbitrator is satisfied that this is an appropriate case for the substitution of a penalty lesser than discharge. Given the seriousness of the infraction, however, a substantial period of suspension is appropriate. For these reasons I order that the grievor be reinstated forthwith in his employment, without loss of seniority and without compensation. I remain seized of this matter in the event of any dispute between the parties respecting the interpretation or implementation of this award.

MICHEL G. PICHER
ARBITRATOR