CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1723

Heard at Montreal, Tuesday December 8, 1987

Concerning

CANADIAN PACIFIC LIMITED

And

THE BROTHERHOOD OF RAILWAY, AIRLINE AND
STEAMSHIP CLERKS, FREIGHT HANDLERS,

DISPUTE:

On January 9, 1987, mr. Martineau was dismissed from service for an act of insubordination by taking an unauthorized leave of absence.

JOINT STATEMENT OF ISSUE:

On December 23, 1986, Mr. Martineau was summoned to an investigation relating to an act of insubordination for having taken an unauthorized leave of absence. Following the investigation, Mr. Martineau was dismissed from the service of the Company.

On October 29, 1986, Mr. Martineau requested a leave of absence for the period December 8 to 22, 1986. The request was formally declined on November 4, 1986. The Union contends that the Company was in violation of Article 26.1 in not affording Mr. Martineau his request.

The Union further contends that, in any case, dismissal was excessive discipline and requested that the employee be returned to service, with full compensation for lost wages and benefits.

The Company declined the grievance.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) C. PINARD	(SGD) J. P. DEIGHAN
for: General Chairman	for: Director of Materials

There appeared on behalf of the Company:

D. J. David	- Labour Relations Officer, Montreal
P. Macarone	- Supervisor Training and Accident Prevention, Materials - System,
J. P. Deighan	- Assistant Director Of Materials
J. Y. Nol	- Assistant Manager of Material, Angus
A. Bourassa	- General Stores Supervisor, Angus
B. Girard	- Supervisor Inventory Reports, Angus.

And on behalf of the Brotherhood:

C. Pinard	- Vice-General Chairman
J. H. Germain	- General Chairman
R. Huard	- Grievance Chairman, Lodge 1267

AWARD OF THE ARBITRATOR

The Arbitrator can only conclude that Mr. Bourassa, the grievor's superior, had good reason not to grant him a leave of absence. The demands of the work were such that his absence would have seriously affected the production and services of his division, which was already understaffed in a very busy period. (Canada Safeway Ltd. (1982) 3 L.A.C. (3d) 193 (Burkett); Indal Products Ltd. (1975), 10 L.A.C. (2d) 374 (Weatherill))

The grievor gives no reason for his unauthorized absence, except to say that he had already bought his travel tickets. It thus does not seem to be a case of an extraordinary absence for urgent reasons, such as illness or death in the family for example. Nor was the grievor going to be absent for reasons beyond his con-trol, such as for a period of incarceration. The courts and boards of arbitration have already had occasion to rule that an unautho-rized absence, willfully pursued for no valid reason, may be cause for dismissal (Port Arthur Shipbuilding Co. v. Arthurs (1968), 70 D.L.R.(2d) 693 (C.S.C.)) or may justify the conclusion that the employee has abandoned his employment (National Steel Drum Co. Ltd. (1968), 20 L.A.C. 19 (Palmer)).

In the instant case Mr. Martineau left a note, prior to his departure, giving the date on which he would return. The Arbi-trator, therefore, cannot conclude that he had intended to resign nor that the employer would have thought that he had. It remains, however, that Mr. Martineau knew that he did not have permission to be absent and that his absence, during this busy period, would seri-ously affect the Company's operations. Despite this knowledge, he saw fit to act in contempt of his employer and abandon his obliga-tion to his duties. Considering his relatively short six years of service, the incident of insubordination toward his superior (see C.R.O.A. Case No. 1722) and the intentional nature of his action, the Arbitrator must conclude that the Company had just cause for the dismissal of Mr. Martineau.

For these reasons the grievance must be dismissed.

(SGD) MICHEL G. PICHER
ARBITRATOR