

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1838

Heard at Montreal, Thursday, 13 October 1988

Concerning

CANADIAN PACIFIC LIMITED

And

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Trainmen T. Badger and D. Mudge were dismissed without just cause and without an investigation to show just cause.

JOINT STATEMENT OF ISSUE:

On June 22, 1987, the Company dismissed Trainmen Trevor J. Badger and Derrick Mudge.

The Union asserts that the Company failed to hold an investigation as required by Article 32, Clause (d) of the Collective Agreement in all cases of discipline and dismissal.

The Union asserts that the dismissals in question are null and void by virtue of the failure to hold an investigation.

The Union further asserts that these men were dismissed for insufficient cause and that the Company's action was unreasonable and arbitrary.

The Union seeks the reinstatement of Trainmen T. Badger and D. Mudge with full compensation and no loss of seniority.

FOR THE UNION:

(SGD) W. M. JESSOP
General Chairman

There appeared on behalf of the Company:

D. A. Lypka	- Supervisor, Labour Relations, Vancouver
B. P. Scott	- Labour Relations Officer, Montreal
J. D. Huxtable	- Assistant Supervisor, Labour Relations

L. J. Guenther - Assistant Supervisor, Labour Relations
F. O. Peter - Labour Relations Officer, Montreal

And on behalf of the Union:

W. M. Jessop - General Chairman, Calgary
J. Clement - Vice-General Chairman, Calgary
B. Marcolini - National Vice-President, Ottawa

AWARD OF THE ARBITRATOR

The material establishes that the grievors, who were probationary employees, were terminated on June 22, 1987. They were not, however, granted the protection of an investigation pursuant to Article 32 of the Collective Agreement. Their grievances were subsequently filed in the form of individual letters signed by Mr. Badger and Mr. Mudge on June 24 and June 30, 1987, respectively. Step I of the grievance procedure expired with the reply of the Company to the two grievors on June 25 and July 3, 1987 respectively.

The time limits for Step II of the grievance procedure are provided for as follows in Article 39 (c) of the Collective Agreement

39(c) Within 60 days from the date decision was rendered under Step 1, the General Chairman may appeal the decision in writing to the General Manager, whose decision will be rendered in writing within 60 calendar days of the date of the appeal. ...

Article 39(d) further provides, in part:

39(d) Any grievance not progressed by the Union within the prescribed time limits shall be considered invalid and shall not be subject to further appeal. ...

The Union did not progress the grievance to Step II within the time limits so described. In the Arbitrator's view, the rights of the grievors cannot be any greater simply because they received verbal rather than written notification of their discharge. Nor can I accept that the time limits have no application because no investigation was conducted. While the grievors may have grieved the failure of an investigation, (see CROA 1721) they were under an obligation to do so in a timely fashion. This they, or their Union, failed to do and the grievances must therefore be dismissed.

OCTOBER 14, 1988

(SGD) MICHEL G. PICHER
ARBITRATOR