

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1839

Heard at Montreal, Thursday, 13 October 1988

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Dismissal of Mr. P. A. Richardson, Track Maintainer, on June 24, 1987.

BROTHERHOOD'S STATEMENT OF ISSUE:

On June 24, 1987, CP Rail presented Discipline Form 104, No. 3016 to Mr. Richardson (the grievor) advising that he was dismissed for conduct unbecoming an employee of CP Rail due to a conviction and incarceration for sexual assault offences which occurred between February 15 and August 15, 1986.

The Union contends that:

1. The grievance was submitted in a timely fashion in accordance with Section 18.6, Step 1 of Wage Agreement 41, and;
2. The discipline assessed the grievor is excessive and should be expunged;
3. The grievor be reinstated forthwith, with full seniority and compensated for all lost wages;
4. The grievor be granted a leave of absence for the period of incarceration.

FOR THE BROTHERHOOD:

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

There appeared on behalf of the Company:

B. Mittleman	- Counsel, Montreal
G. W. McBurney	- Supervisor, Labour Relations, Toronto

L. G. Winslow - Labour Relations Officer, Montreal
J. Freeman - Observer
G. Marcoux - Observer

And on behalf of the Brotherhood:

M. Gottheil - Counsel, Ottawa
M. L. McInnes - System Federation General Chairman,
 Ottawa
D. Lacey - Special Projects Assistant, Calgary
R. Della Serra - General Chairman, Montreal

AWARD OF THE ARBITRATOR

The Company raises an objection with respect to the arbitrability of the grievance. It is common ground that the grievor, who was incarcerated in the Woodstock Provincial Jail, received personal notice of his termination, delivered to him by a Company officer, on June 24, 1987. In accordance with the provisions of Article 18.6 of the Collective Agreement he then had 28 days in which to file a grievance. The pertinent provisions of that article are as follows:

18.6 A grievance concerning the interpretation, or alleged violation of this agreement, or an appeal by an employee who believes he has been unjustly dealt with shall be handled in the following manner.

STEP I The aggrieved employee, the Local Chairman or his duly authorized representative shall present the grievance in writing to his immediate supervisor within twenty-eight calendar days from the date of the cause of the grievance and a decision shall be rendered in writing within twenty-eight calendar days of receipt of the grievance.

...

18.9 A grievance not progressed within the time limits specified shall be considered settled on the basis of the last decision and shall not be subject to further appeal. Where a decision is not rendered by the appropriate officer of the Company within the time limits specified, the grievance may be progressed to the next step in the grievance procedure, except as otherwise provided in Clause 18.10.

The grievor's grievance was not filed until September 10, 1987, some 78 days after his notification by the Company, and 50 days after the expiry of the time limits under Step I of the grievance procedure

The Arbitrator can see no basis to depart from the established interpretation of these provisions whereby the time limits in Step I have been found to be mandatory (see CROA 1233). Nor can I accept

that the parties did not intend the initial filing of the grievance to fall within the concept of "progressing the grievance" within the meaning of Article 18.9. Given the settled interpretation of these provisions by this Office, and comparable decisions in respect of similar language in other collective agreements, (see CROA 1114, 36, 837 and 1560) the Arbitrator cannot see any basis to find that the parties intended the time limits attached to the filing of a grievance to be other than mandatory.

For these reasons the grievance must be dismissed.

OCTOBER 14, 1988

(SGD) MICHEL G. PICHER
ARBITRATOR