

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2119

Heard at Montreal, Thursday, 14 February 1991

concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Discipline received by Mr. S.O. Norrad, Employee No. 619990, Extra Gang Foreman, Sinker, Nemegos Subdivision, on January 3, 1990, on Form 104 dated December 28, 1989.

BROTHERHOOD'S STATEMENT OF ISSUE:

On January 3, 1990, Mr. S.O. Norrad, was informed that his record had been debited with dismissal on Form 104, dated December 28, 1989, for:

Deliberately falsifying timesheets resulting in overpayment of wages to fellow employees and your claiming and receiving monies to which you were not entitled, thus defrauding the Company, pay period ending October 12, 1989, Algoma Division.

Mr. Norrad had additional discipline assessed by being held out of service from October 26, 1989, until his dismissal on January 3, 1990.

Mr. Norrad, while holding the position of Extra Gang Foreman under the supervision of Roadmaster L. Paquin, had, on several occasions, let employees work time in to take time off or had them take time off and then work it in. Mr. Paquin was usually notified when this was going to happen.

In conversation with Roadmaster L. Paquin on January 25, 1990, and on February 1, 1990, the Union was informed that there were a few occasions where one employee or another had come to work late or had missed a day and an agreement was made with Mr. Norrad to let that employee work the time in, so that he wouldn't miss any time in that pay period. Mr. Paquin also stated that there was an agreement between himself and Mr. Norrad that in order to catch the Budd Car to Cartier for their days off, the gang would be allowed to work time in, in order to leave early to catch the Budd Car. Mr. Paquin said he left it up to Mr. Norrad to decide how early the men would have to leave and what amount of time they would have to work in, so that they would not miss their ride to Cartier. These facts were never mentioned in Mr. Paquin's memorandum of November 28, 1989.

Also mentioned in conversation with Mr. Paquin was the fact that Mr. Norrad's gang was working a 9 and 5 cycle prior to June of 1989, yet was instructed by the Company to show that the gang had been working 10 days. When Mr. Paquin was being relieved by Mr. H. Goheen in June, 1989, he instructed Norrad to only put in time on the time sheet for the 9 days that the gang actually worked. This arrangement supposedly was not changed when Mr. Paquin returned. The fact of the matter is that the Company violates its own rules by instructing the foreman, not only on Mr. Norrad's gang, but also on other various gangs on the Eastern Region, to submit time on the time sheet for days that they haven't worked.

In reference to Superintendent Champion's response to the initial claim, referring to paragraph 3, Mr. Norrad had no intention of deliberately misrepresenting the time shown on the time sheets, but rather felt that since it was allowed in the past to have employees work time in to take time off or vice versa, that there should be no reason why this practice would now not be allowed.

The Union contends that the discipline assessed to Mr. Norrad was too severe and unwarranted since there was an agreement with Mr. Norrad and his previous supervisor.

The Union requests that Mr. Norrad be reinstated to his position forthwith without any loss of seniority. He be compensated for all lost wages and expenses incurred as a result of him being held out of service since October 26, 1989, and dismissed.

The Company denies the Union's contentions and declines our requests.

FOR THE BROTHERHOOD:

(SGD.) L. M. DiMASSIMO
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. G. Egan	-- Assisitant Supervisor Labour Relations, IFS, Toronto
B. Mittleman	-- Counsel, Montreal
L. G. Winslow	-- Labour Relations Officer, Montreal
D. T. Cooke	-- Labour Relations Officer, Montreal
S. Mayne	-- Roadmaster, Cartier
L. Paquin	-- Roadmaster, Peterborough

And on behalf of the Brotherhood:

D. Brown	-- Counsel, Ottawa
L. M. DiMassimo	-- System Federation General Chairman, Ottawa
R. Della Serra	-- Federation General Chairman, Montreal

AWARD OF THE ARBITRATOR

The material establishes to the Arbitrator's satisfaction that Extra Gang Foreman Norrad knowingly falsified his own time claims, as well as those of employees working under his supervision by claiming payment for hours not worked during the pay period ending October 12, 1989.

Counsel for the Brotherhood submits that there are mitigating circumstances, including the fact that the Company had tolerated some laxity in the method of timekeeping including, among other things, allowing employees to "work in" their time as a means of being compensated for hours which they did not in fact work, thereby allowing them to work shorter hours without loss of pay on the last day of a pay period in order to catch a dayliner train home. It is the Brotherhood's view that any departure from normal timekeeping practices, including the "working in" concept should be clearly bulletined to the attention of all employees. As valid as that suggestion may be, it does not respond to the seriousness of the grievor's actions in the case at hand.

It cannot be disputed that Mr. Norrad submitted time claims for himself and for other employees for work which neither he nor they performed during the pay period in question. The claims so submitted were in no way related to the "working in" system, and cannot be explained or excused on the basis of any understanding with the grievor's roadmaster or any other person in a position of managerial responsibility. In the circumstances I am compelled to conclude that the actions of the grievor were calculated to defraud the Company of wages for his own benefit and for the benefit of certain selected employees.

It is well settled that an act of deliberate theft will generally be a dismissable offence, as it brings to an end the relationship of trust fundamental to the duties and obligations running between employer and employee (see CROA 1631). More particularly, this Office has previously found that falsifying timekeeping reports is tantamount to theft that justifies dismissal (see CROA 1184). In the Arbitrator's view there are no mitigating circumstances in the instant case which would justify a departure from the general principles stated. The Company is entitled to know that a person discharging the responsibilities of an Extra Gang Foreman, including the maintenance of unsupervised timekeeping records, must be free of any question as to his or her trustworthiness in that regard.

Moreover, in the instant case, given the evasiveness and inconsistency of the grievor's attempted explanations of his actions, there is little reason to believe that any rehabilitative impact would be gained from a lesser penalty.

For the foregoing reasons the grievance must be dismissed.

February 15, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR