

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2328

Heard at Montreal, Wednesday, 10 February 1993

concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

Dismissal of Conductor K.D. Lensen of Coquitlam, B.C.

JOINT_STATEMENT_OF_ISSUE:

Conductor Lensen booked sick on the register at North Bend, B.C. on October 28, 1991 and was then transported by taxi to his home terminal of Coquitlam. Mr. Lensen submitted a wage claim for 100 miles for deadheading.

Once the Company became aware of Conductor's Lensen's claim, a formal investigation was held. As a result of the investigation, Conductor Lensen was dismissed March 17, 1992 for deliberately and knowingly submitting a fraudulent wage claim, at Coquitlam, B.C., on October 28, 1991.

The Union appealed the discipline as unwarranted in this instance as the Company had not shown that Conductor Lensen deliberately and knowingly submitted a fraudulent wage claim, and requested reinstatement with full compensation and no loss of seniority.

The Company refused to reinstate Mr. Lensen.

FOR THE UNION:

FOR THE COMPANY:

(SGD.)_L._O._SCHILLACI

(SGD.)_C._E._MINTO

GENERAL CHAIRMAN

GENERAL MANAGER, OPERATIONS & MAINTENANCE, HHS

There appeared on behalf of the Company:

M. E. Keiran

Manager, Labour Relations, Vancouver

R. N. Hunt

Labour Relations Officer, Montreal

P. C. Mahoney

Assistant Superintendent, Lakehead Division

And on behalf of the Union:

L. O. Schillaci

General Chairman, Calgary

B. L. McLafferty

Vice-General Chairman, Moose Jaw

B. Marcolini

National President, UTU-Canada, Ottawa

K. D. Lensen

Grievor

AWARD_OF_THE_ARBITRATOR

Upon a review of the material filed the Arbitrator is satisfied that the Company has failed to establish, on the balance of probabilities, that Mr. Lensen deliberately and knowingly submitted a fraudulent wage claim. The evidence discloses that once, prior to October 28, 1991, Mr. Lensen had suffered a work related injury which caused him to book sick. On that occasion, after taking a taxi to Hope Hospital, the grievor spoke with Assistant Superintendent P.C. Mahony who authorized him to submit a deadhead wage claim, notwithstanding that he had booked sick. That incident appears to have occurred on December 14, 1990. During the course of the investigation of the grievor's wage claim for October 28, 1991, Mr. Lensen related that he believed that he was entitled to make the wage claim, based on the prior incident.

The evidence further discloses that during the course of a conversation with Mr. Mahony, on or about November 8, 1991, there was discussion of the fact that an employee is not entitled to claim wages for deadheading when he or she has booked off sick. During the course of the meeting Mr. Mahony proceeded to approve a deadhead wage ticket filed earlier by Mr. Lensen, apparently arising out of an incident which had occurred on September 25, 1991. Mr. Lensen relates that he was under the mistaken impression that the Assistant Superintendent was approving his deadheading wage claim of October 28, 1991, which concerned deadheading while booked off sick. It does not appear disputed that the incident of September 25, 1991 did not involve booking off sick, but rather deadheading without authorization.

As a general matter, the grievor knew, or reasonably should have known that the making of a wage claim in doubtful circumstances should be the subject of inquiries, either with a Company officer or a Union representative for the purposes of clarification. As an employee of ten years' service he could be expected to know the general rules regarding the obligations of an employee who has booked off sick, and the fact that such a claim for deadheading cannot be made in such a circumstance.

There does appear to have been some confusion in Mr. Lensen's mind, however, arising primarily from the contrary treatment which he received from Mr. Mahony in respect of his claim in December of 1990. On the whole, the Arbitrator is satisfied that the Company has not established by clear and cogent evidence the serious charge of deliberate fraud which it raises against the grievor. By the same token, I am satisfied that he engaged in a serious error of judgement, bordering on negligence, for which some degree of discipline was appropriate. In all of the circumstances, while I am satisfied that the grievor's discharge was not justified, I am equally satisfied that this is not a case where an order for compensation is appropriate.

For the foregoing reasons the grievance is allowed, in part.
Mr. Lensen shall be reinstated into his employment, without loss of seniority, and without compensation for any wages or benefits lost. He must appreciate that in the future, any failure on his part to make appropriate inquiries with respect to timekeeping practices and wage claims may result in the most serious of consequences.

February 12, 1993

(Sgd.)_MICHEL_G._PICHER

ARBITRATOR