

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2442

Heard in Montreal, Wednesday, 12 January 1994
concerning
CANADIAN PACIFIC LIMITED

and
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Discipline assessed the Machine Operator C.P. Mittemeyer.

JOINT STATEMENT OF ISSUE:

On June 3 and 4, 1993, the grievor used a Company vehicle for personal business and used a Company credit card to purchase fuel while on personal business. For this, the grievor was dismissed.

The Brotherhood contends that: 1.) That, with one exception, the grievor had a discipline free record at the time of the incident; 2.) That the grievor never attempted to deceive or to mislead the Company at his investigation. He answered all questions truthfully and expressed sincere remorse for his poor judgment; 3.) That other mitigating factors existed which formed a basis for the grievor's actions; 4.) That, as a result of all this, the discipline assessed was too severe and unwarranted in the circumstances.

The Brotherhood requests that the grievor be reinstated in his former position without loss of seniority and with full compensation for all wages and benefits lost as a result of this matter.

The Company denies the Brotherhood's contentions and declines its request.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) D. MCCracken	(SGD.) M. E. KEIREN
SYSTEM FEDERATION GENERAL CHAIRMAN GENERAL MANAGER, OPERATIONS & MAINTENANCE, HHS	

There appeared on behalf of the Company:

R. M. Andrews	- Labour Relations Officer, Vancouver
D. T. Cooke	- Labour Relations Officer, Montreal
S. Moutinho	- Labour Research Officer, Montreal

And on behalf of the Brotherhood:

P. Davidson	- Counsel, Ottawa
D. McCracken	- System Federation General Chairman, Ottawa

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that the grievor knowingly used a Company vehicle, without authorization, to travel some 700 miles, round trip, to his home. Further, he used a Company credit card to purchase fuel on the trip. It is difficult to characterize Mr. Mittemeyer's actions as other than misappropriation of Company property and theft.

The Brotherhood submits that there are mitigating factors to be considered. Among them, it cites the quality of his prior service and that he was open and forthcoming with the employer.

With this latter argument the Arbitrator has a degree of difficulty. As a crane operator, Mr. Mittemeyer had the use of a 3/4 ton truck, and a Company credit card for fuelling the truck. The record discloses that when Mr. Mittemeyer was first investigated, it was for the use of the truck for a trip to his home in Lacombe, Alberta. At the initial investigation of the grievor, held on June 9, 1992, Mr. Mittemeyer admitted to having taken the Company vehicle home on personal business on June 3 and 4, 1992. He explained that he did so because his own vehicle was in need of repairs. When asked whether it was the normal practice for him to take his Company vehicle home, or to use it for personal business he responded "No."

Further facts with respect to the grievor's conduct emerged only later. Subsequent investigations by the Company revealed the use of the Company credit card for the purchase of fuel at Stettler, Alberta. A supplementary investigation, conducted on July 4, 1992 yielded an admission from Mr. Mittemeyer that he did use the Company credit card to purchase fuel for the trip which he took to Lacombe in the Company's truck on July 3 and 4. When confronted with further gasoline credit card purchase receipts relating to May 24 and May 31, Mr. Mittemeyer then admitted that he had made those gas credit card purchases when he had also used the truck for similar trips on those dates.

Unfortunately, the record leaves much to be desired with respect to the overall issue of mitigation. Firstly, it cannot be said that the grievor's actions on June 3 and 4 were a spur of the moment event. Rather, they were one in a series of occasions when he knowingly misused the Company's vehicle, without authorization, to travel some 700 miles to and from his home. Additionally, it is evident that at the initial investigation he not only sought to conceal from the Company the prior trips which he had taken, but also the fact that he had used the Company's credit card to purchase fuel for his unauthorized trips. To put it bluntly, as the investigation process unfolded he admitted only as much wrongdoing as the evidence in the Company's possession made it impossible to deny. In the circumstances the Arbitrator accepts the submission of the Company that Mr. Mittemeyer's conduct involved a fundamental breach of the relationship of trust between himself and his employer. In the absence of compelling mitigating factors, the Arbitrator cannot conclude that the penalty of termination should be reduced.

For all of the foregoing reasons the grievance must be dismissed.

14 January 1994_____

MICHEL G. PICHER
ARBITRATORR