Canadian Railway Office of Arbitration
Case No. 2483
Heard in Calgary, Tuesday, 14 June 1994
concerning
Canadian Pacific Limited
and
Brotherhood of Maintenance of Way Employees
ex parte
Dispute:
Dismissal of Bridgetender G. Carkner.
Ex Parte Statement of Issue

Between February 11 and March 11, 1993 the grievor charged a number of personal long distance telephone calls to the Company. For this he was dismissed on June 2, 1993.

The Brotherhood contends that the discipline assessed to the grievor was excessive and unwarranted in the circumstances.

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

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

The grievor had twelve years of service with the Company and possessed no discipline at the time of dismissal.

for the Brotherhood:
(sgd.) D. McCracken
System Federation General Chairman

There appeared on behalf of the Company:
R. M. Andrews - Labour Relations Officer, Vancouver
D. T. Cooke - Manager, Labour Relations, Montreal

And on behalf of the Brotherhood:
P. Davidson - Counsel, Ottawa
D. McCracken- System Federation General Chairman, Ottawa
D. Brown - Senior Counsel, Ottawa
K. Deptuck - National Vice-President, Ottawa
Wm. Brehl - General Chairman, Vancouver

award of the Arbitrator

It is not disputed that the grievor did make unauthorized use of the Company's telephones to complete personal long distance calls. The general principles applying to such a case were discussed in CROA 2482, and need not be repeated. For reasons related in that case, the Company has not, in the past, consistently treated the abuse of telephone privileges as theft constituting a dismissable offence (see, e.g., CROA 1650).

In the case at hand there are, in addition, certain mitigating factors. Primary among them is the unrebutted assertion of the grievor, who was the bridgetender at Pitt River for some twelve years, regularly used the company telephone to make personal calls, some of which were long distance. He had never been directed to any rule to the contrary. According to Mr. Carkner's account, he was given to understand, from the bridgetender who trained him years ago, that it was not improper to make use of the telephone in that way.

Moreover, the Arbitrator is not satisfied that Bulletin VI-473, an information bulletin dated January 15, 1992 relating the disciplinary treatment of more than thirty employees for various

infractions, one of which related to the unauthorized use of the Company's telephones, is a sufficiently clear communication to the employees of a Company rule or the consequences that would necessarily flow from it. While that bulletin contains the account of a machine operator who was apparently discharged for charging personal long distance calls in violation of posted instructions, it does not give an employee in the position of the grievor full information as to all of the factors considered in that case. At best, accepting that the grievor is under a general obligation to remain informed as to content of bulletins, it is arguable that he should have made inquiries to clarify whether he was violating a Company rule or policy.

In the circumstances, having regard to the principles related in CROA 2482, the Arbitrator is satisfied that a reduction of penalty is appropriate in the circumstances. The grievor shall be reinstated into his employment, without compensation or benefits, and without loss of seniority.

June 22, 1994 _____

MICHEL G. PICHER
ARBITRATOR