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CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2672

Heard in Calgary, Thursday, 16 November 1995

concerning

Canadian Pacific Limited

and

Brotherhood of Maintenance of Way Employees

ex parte

DISPUTE:

Dismissal of Mr. D. Baldwin.

Brotherhood's STATEMENT OF ISSUE:

On or about January 8, 1995, the grievor was assessed with 30 demerit marks for an alleged violation of CROR Rules 824, Form V280 and Rule A(vii)). The assessment of this discipline resulted in the grievor's dismissal for accumulation of demerits.

The Union contends that: 1.) The past practice of the Company in such situations has not been to dismiss employees but to place temporary restrictions upon them (i.e. to demote them temporarily); 2.) The discipline assessed was unwarranted and excessive in the circumstances.

The Union requests that the grievor be reinstated into Company service forthwith, without loss of seniority and with full compensation and benefits.

The Company denies the Union's contentions and declines the Union's request.

FOR THE Brotherhood:

(SGD.) J. J. Kruk

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

M. Eggleston - Manager, Engineering Maintenance, Winnipeg

R. Wadell - Manager, Engineering Maintenance, Calgary

D. A. A. Reid - Supervisor, Engineering Maintenance, Calgary

And on behalf of the Brotherhood:

D. Brown - Sr. Counsel, Ottawa

J. J. Kruk - System Federation General Chairman, Ottawa

D. McCracken - Federation General Chairman, Ottawa

W. Kirkpatrick - General Chairman, Vancouver

H. Heinrichs - General Chairman, Prairie Region

AWARD OF THE ARBITRATOR

It is not disputed that the grievor committed a serious error. The record discloses that on November 28, 1994 Mr. Baldwin held a track occupancy permit on the Cranbrook subdivision west from Elko to Signal 955, Cranbrook. During the course of the working day the grievor granted authority to Work Extra 3069 to operate between the east siding switch at Caithness and Station Name Sign Jaffray. Some three hours later the grievor also gave clearance to Deputy Roadmaster Rota from the west siding switch Elko to the Station Name Sign Wardner. This involved a serious error, as the two authorities overlapped for a length of 6.5 miles. The discrepancy was discovered by Mr. Rota, who advised the grievor, at which point an adjustment was made in the restriction of the work train, allowing Mr. Rota to proceed. Fortunately, no

accident or mishap occurred.

It is common ground that the incident in question was the second time the grievor had made an error in respect of a track occupancy permit. The previous incident occurred on April 8, 1994, and resulted in the assessment of thirty demerits, apparently now subject to the grievance procedure. That incident also involved giving a roadmaster authority to occupy TOP limits which had previously been assigned to a work extra on the Cranbrook Subdivision.

The sole issue in the case at hand is the appropriate measure of discipline. The Company assessed thirty demerits against Mr. Baldwin. Given that his prior record stood at fifty, it submits that his discharge was justified in the circumstances. The Brotherhood, on the other hand, submits that a number of considerations suggest that the proper response would have been to demote Mr. Baldwin and impose restrictions upon him. It argues that a number of other employees have been treated in that fashion, and that while thirty demerits is the normal measure of discipline for a first offense, discharge is not normally resorted to on a second offence. In this regard it cites the example of a number of employees who have been so treated, including at least one employee at the same location, Mr. R. Paul, who, after two incidents of the same kind, was made subject to restrictions, being demoted from track maintenance foreman to track maintainer with no authority to hold track occupancy permits. Further, the Brotherhood submits that there has been considerable confusion among track maintenance employees generally, apparently arising out of the institution of new rules and forms in respect of track occupancy permits. Finally, the Brotherhood submits that the length and quality of the grievor's service do not justify his termination in the circumstances.

Upon a review of the whole of the material, the Arbitrator is satisfied that it is appropriate to substitute a penalty short of discharge in the case at hand. While the grievor's error of judgment is extremely serious, it is not clear that the rehabilitation of the grievor and deterrence of other employees from similar conduct cannot be achieved by the substitution of a lengthy suspension, coupled with the demotion and restriction of Mr. Baldwin. That conclusion is supported by a number of mitigating factors. Firstly, the grievor can be characterized as a long service employee, having been employed some fourteen years at the time of the incident in question. A review of his entire disciplinary record over that period does not reflect an extremely negative performance. Mr. Baldwin was disciplined six times over the span of fourteen years, prior to the culminating incident. While that is not an exemplary record, it does not disclose an employee who has been grossly careless over the years.

The Company's concern is, understandably, prompted by the fact that the grievor was involved in three rules infractions during the ten month period prior to his termination. Without diminishing the gravity of that record, it does appear that the treatment afforded him in the circumstances of his second TOP infraction, resulting in his discharge, does appear to exceed the norm applied to other employees in such circumstances. Additionally, a further mitigating factor is that the grievor was not current in his rules training, a flaw for which the Company

must bear some responsibility and, but for which, the grievor might arguably have been better prepared to deal with the situation he confronted on November 28, 1994.

For all of the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment, without compensation or benefits, and without loss of seniority. Mr. Baldwin shall be returned to work at the rank of track maintainer, subject to the restriction that he not be permitted to hold track occupancy permits until such time as the Company is satisfied that he should be allowed to do so.

November 20, 1995

(signed) MICHEL G. PICHER

ARBITRATOR