

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2681

Heard in Montreal, Tuesday, 12 December 1995

concerning

CANADIAN PACIFIC LIMITED

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The dismissal of spare Intermodal employee Ms. J. Persaud.

JOINT STATEMENT OF ISSUE:

Ms. Persaud submitted a verbal and written request for a leave of absence from July 22 to September 2, 1994. The requests were not formally approved by the appropriate Company Officer. As a spare employee, Ms. Persaud was called to work on an "as and when required" basis. The Company attempted to call Ms. Persaud to work on July 21 and 22, 1994. On July 22, 1994 when the Company called Ms. Persaud to ask her to report for work, an individual identifying himself as Ms. Persaud's husband answered the phone and advised the Company that Ms. Persaud was "out of town" and "would not be back until September 2, 1994."

On September 7 and 23, 1994, investigations were held with Ms. J Persaud in connection with her unauthorized leave of absence from July 22 until September 2, 1994. Following completion of the investigations, Ms. Persaud was dismissed for insubordination by taking an unauthorized absence from July 22 to September 2, 1994.

The Union maintains that Ms. Persaud was of the view that her verbal request for a leave of absence from July 22 to September 2, 1994, had been accepted. As a result, she departed for Guyana to tend to personal matters.

The Union progressed a grievance requesting that Ms Persaud be reinstated with no loss of seniority, wages and benefits.

The Company has declined the Union's request.

FOR THE UNION:

(SGD.) R. PAGÉ

EXECUTIVE VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) C. GRAHAM

FOR: GENERAL MANAGER, INTERMODAL

There appeared on behalf of the Company:

C. Graham	– Labour Relations Officer, Montreal
D. J. David	– Labour Relations Officer, Montreal
D. L. Ferguson	– Office Manager, Vaughan Terminal

And on behalf of the Union:

R. Pagé	– Executive Vice-President, Montreal
D. J. Bujold	– National President, Ottawa
P. Conlon	– Assistant Divisional Vice-President, Toronto
N. Lapointe	– Assistant Divisional Vice-President, Montreal

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor filed a written request for a leave of absence from July 22 to September 2, 1994. However, the evidence also discloses that the Company never responded to her request. It appears that a written denial of Ms. Persaud's request was prepared by her supervisors, however, it was never communicated to her. That is because the normal practice of management in the workplace is to hand written communications to employees at work. As it happened, the grievor never returned to work after July 8, the date on which she filed her written request.

The evidence establishes that Ms. Persaud was a spare employee, whose calls to work were sporadic and intermittent. It appears that she was only called to work for two days between July 5 and July 22, but was unavailable to respond to either of those calls, made on July 13 and July 21.

In the Arbitrator's view the instant cases discloses a degree of laxity on the part of both the Company and the employee. The Company knew, or reasonably should have known, that Ms. Persaud had complied with its request that she file a written application of her leave of absence. That request plainly indicated that she would be leaving on July 22nd. In that circumstance, particularly having regard to the fact that she was not called into work on a regular basis, the Company could not fairly rely on its normal practice of giving her a written response when she was present in the work place. While that practice might be entirely appropriate for full time employees or employees with regular part-time work, it becomes questionable in the circumstances of a spare employee in the grievor's circumstances.

On the other hand, the Arbitrator cannot reject out of hand the suggestion of the Company that Ms. Persaud should not have assumed, without better confirmation, that her request for a leave of absence was approved simply because she had not been communicated any written denial of her request. It would, it seems to me, have been incumbent upon her to clarify her circumstance by calling her supervisor to confirm the status of her requested leave, when she did not hear anything from the Company. However, without necessarily condoning the grievor's action, the Arbitrator is satisfied that it constitutes something less than an abandonment of her job, as alleged by the Company. While it may not have been reasonable for Ms. Persaud to conclude that her request for a leave was approved, it does appear that she honestly held that belief. Nor does the fact that the grievor submitted a claim for unemployment insurance negate the above characterization of what occurred. It does not appear disputed that spare employees are routinely advised by their union to submit UIC claims when it appears that they may not be called to work for a significant period of time.

In the result, the Arbitrator is satisfied that the grievance should be allowed, in part. Given the failure of the grievor to exercise the necessary care when no written response to her request was in fact communicated, this is not a case for an order of compensation. The Arbitrator is satisfied, however, that the grievor did act out of an honestly held belief that she was authorized to take the leave. When that is coupled with the grievor's prior disciplinary record, the grievor's termination is not appropriate. The Arbitrator therefore directs that Ms. Persaud be reinstated into her employment, without compensation or benefits and without loss of seniority.

December 15, 1995

(signed) MICHEL G. PICHER
ARBITRATOR