

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2757

Heard in Montreal, Wednesday, 10 July 1996

concerning

**CANADIAN PACIFIC LIMITED**

and

**TRANSPORTATION COMMUNICATIONS UNION**

**EX PARTE**

### **DISPUTE - UNION:**

The debiting of the record of Walter Pasveer with 40 demerits for "the failure to follow the instructions of a supervisor and leaving your work assignment prior to the completion of your shift on June 13, 1995."

### **DISPUTE - COMPANY:**

The assessment of 40 demerit marks to the record of Mr. Walter Pasveer for his failure to follow the instructions of a Supervisor and leaving his work assignment prior to the completion of his shift on June 13, 1995.

### **UNION'S STATEMENT OF ISSUE:**

On June 13, 1995, Mr. Pasveer had a discussion with another clerk, which was interrupted by Supervisor McCusker. After a brief argument with McCusker, Mr. Pasveer booked sick because of stress. The following day he contacted the EFAP in order to deal with his stress.

Subsequently, he was advised that he was held out of service pending investigation. An investigation was held on July 6th, and a subsequent investigation was held on July 12th.

As a result of the investigation, Mr. Pasveer was assessed 40 demerits.

The Union progressed a grievance claiming that the discipline was excessive in the circumstances, requesting a reduction in penalty and restoration of lost wages and benefits. The Company declined the grievance.

### **COMPANY'S STATEMENT OF ISSUE:**

On June 13, 1995, Mr. W. Pasveer was occupying the position of Crew Clerk on the 1500 to 2300 shift at the Calgary Calling Bureau. At approximately 1650 hours, Mr. Pasveer was instructed by his supervisor, Mr. B. McCusker to call a crew.

Mr. Pasveer did not call the crew as instructed by Supervisor McCusker and shortly thereafter he stated he was going to book off. Mr. Pasveer was then advised by Supervisor McCusker to remain at work and complete his assignment. Contrary to instructions, Mr. Pasveer left his assignment prior to the completion of his shift.

On June 14, 1995, Mr. Pasveer was advised by letter that he was held out of service pending an investigation into the June 13, 1995 incident.

On June 14, 1995, the Company was provided with medical information indicating that Mr. Pasveer was psychologically and emotionally unfit for work from June 13 - 27, 1995.

Investigations into the June 13, 1995, incident were ultimately conducted on July 6, 12 and 14, 1995. As a result of the facts obtained in the investigations, Mr. Pasveer's record was assessed with 40 demerit marks for his failure to

follow the instructions of a supervisor and leaving his work assignment prior to the completion of his shift on June 13, 1995.

The Union progressed a grievance stating that the discipline assessed was excessive and requesting a reduction in the demerits assessed and compensation for any loss of wages and benefits.

The Company has declined the Union's request.

**FOR THE UNION:**

**(SGD.) P. J. CONLON**

**ASSISTANT DIVISIONAL VICE-PRESIDENT**

**FOR THE COMPANY:**

**(SGD.) C. GRAHAM**

**FOR: DISTRICT GENERAL MANAGER, PRAIRIE**

There appeared on behalf of the Company:

- |           |                                      |
|-----------|--------------------------------------|
| C. Graham | – Labour Relations Officer, Montreal |
| R. Weir   | – Manager, Yard Operations, Calgary  |

And on behalf of the Union:

- |              |  |
|--------------|--|
| P. J. Conlon | – Assistant Division Vice-President, Toronto |
| R. Pagé      | – Executive Vice-President, Montreal         |
| V. Dey       | – Local Chairman, Calgary - Witness          |
| W. Pasveer   | – Grievor                                    |

**AWARD OF THE ARBITRATOR**

The evidence before the Arbitrator establishes, beyond substantial controversy, that the grievor refused to perform an assignment given to him by Supervisor B. McCusker, as alleged. It is also proved that he booked off work, as an apparent form of protest against the directive given to him. I am satisfied that his actions were plainly in violation of the obligation of an employee to "obey now, grieve later" in a circumstance where he or she may take issue with the directive being made by the supervisor.

There are, however, mitigating factors to be considered. As elaborated in **CROA 2758**, the grievor was under a substantial degree of personal stress at the time of the incident in question. He was, as is evident from the documentation tabled before the Arbitrator, being treated by a physician for stress and anxiety flowing from the symptoms of a chronic physical illness, as well as a series of personal problems. In the circumstances, bearing in mind that the grievor has some fifteen years' service, had a clear record at the time of the incident and, notwithstanding his earlier difficulties in relating to other employees and supervisors, I am satisfied that the substitution of twenty demerits is appropriate in the circumstances. That substitution of penalty is, moreover, made in contemplation of the conditions attached to the grievor's reinstatement as reflected in **CROA 2758**.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor's record be amended to reflect the assessment of twenty demerits for the grievor's failure to follow the instructions of his supervisor, and for unjustifiably leaving his work assignment on June 13, 1995.

July 12, 1996

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**