

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3166
Heard in Calgary, Wednesday, November 15, 2000
Concerning
CANADIAN PACIFIC RAILWAY COMPANY
And
CANADIAN COUNSEL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)

DISPUTE:

The assessment of 40 demerit marks to Yard Foreman S.B. Kopp of Lethbridge, Alberta and his subsequent discharge account an accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

On April 10, 1997, Yard Foreman S.B., Kopp was assessed 40 demerit marks for his failing to properly secure standing equipment, resulting in the uncontrolled movement of eight loaded cars and derailment of car SOO 117212, a violation of CROR General Notice, General Rule Ai), (iii), (vi), 112, GOI Section 15 Item 28.1 B(I), Prairie District Monthly Operating Bulletin of March 1997 - CPR Hand Brake Policy, Lethbridge, March 10, 1997.

The Council appealed the discipline assessed Yard Foreman Kopp on the grounds that such was too harsh in the circumstances. The Council appealed the ultimate result of the discipline assessed Yard Foreman Kopp (in that such resulted in his discharge from the Company) on the grounds that such was excessive in the circumstances. The Council maintained that the discipline/discharge assessed Yard Foreman Kopp ought to be mitigated in this situation given his improved record of late, the fact that he had never received demerits for a major rule infraction and the fact that he had been co-operative and frank with the Company in these circumstances.

The Council maintained that Yard Foreman Kopp properly notified the proper authorities of the incident in question and took full responsibility for the accident. The council suggested that Yard Foreman Kopp had made a simple mistake near the completion of his eight hour midnight shift. Fortunately, this mistake resulted in no personal injury, no equipment damage and very minimal track

damage.

The Council requested in the circumstances that Yard Foreman Kopp be reinstated with no loss of seniority and no compensation for time lost.

The Company has declined the Council's grievance stating that the discipline assessed was justified, warranted and reasonable and that given Mr. Kopp's past work history and service with the Company, no mitigation of the discipline assessed is warranted.

FOR THE COUNCIL:

(SGD.) Q. H. FINNISON

FOR: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) C. M. GRAHAM

FOR: GENERAL MANAGER, FIELD OPERATIONS

Appearing on behalf of the Company:

J. Copping	- Manager, Labour Relations, Calgary
C. M. Graham	- Labour Relations Officer, Calgary
C. Lencucha	- Operations Coordinator, Lethbridge
G. S. Seeney	- Manager, Labour Relations, Calgary
G. Wilson	- Legal Counsel, Calgary

Appearing on behalf of the Council:

M. A. Church	- Legal Counsel, Toronto
L. O. Schillaci	- General Chairperson, Calgary
D. H. Finnson	- Vice-General Chairperson, Calgary
G. R. Crawford	- Local Chairperson, Lethbridge
R. Van Pelt	- Vice-Local Chairperson, Lethbridge
S. B. Kopp	- Grievor

AWARD OF THE ARBITRATOR

It is not disputed that the grievor was responsible for failing to properly secure standing equipment, resulting in the derailment of a car. The sole issue in the case at hand is the appropriate measure of discipline.

The grievor's disciplinary record prior to the events of March 10, 1997 stood at forty-five demerits. That accumulation was due almost entirely to an abysmal record with respect to time-keeping and non-availability for duty, an infraction for which he incurred discipline of some ten prior occasions. With respect to rules infractions, the record discloses that the grievor had received discipline on only

one prior occasion, when he received fifteen demerits for failing to report a defective hot box detector in February of 1993.

Concern does arise, however, as to the Company's view of Mr. Kopp's actual record at the time it assessed discipline against him for the incident of March 10, 1997. It does not appear disputed, as reflected in a letter from the Company's District General Manager, Prairie District to the Council's General Chairperson, in the form of an e-mail dated January 4, 1999, that the Company considered the grievor responsible for a separate serious rules violation in 1995 which had resulted in a derailment and considerable damage to equipment, as well as personal injury. It is now agreed that that incident in fact involved the grievor's brother, and was erroneously viewed by the Company as forming part of his record.

What then does the instant case disclose? The incident of March 10, 1997 involved the second operating rules infraction committed by the grievor during the course of his employment. In the Arbitrator's view the assessment of forty demerits for that event must be viewed as high, in the circumstances. He was, however, arguably dismissable given his prior accumulation of forty-five demerits, as a fifteen demerit penalty still would have placed him in that position. However, in light of the grievor's relatively good performance with respect to rules infractions prior to the culminating incident, the Arbitrator is persuaded that this is an appropriate case to fashion a substitution of penalty, the terms of which should protect the Company's interests. As the record shows that the grievor's previous attendance difficulties substantially contributed to the Company's decision to terminate his services, as reflected in his accumulated demerits, I deem it appropriate to fashion conditions with respect to that aspect of his employment following his reinstatement, and to make no order for compensation.

The grievance is therefore allowed in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without compensation for wages and benefits lost. Mr. Kopp's reinstatement shall be conditional upon his accepting to maintain a record of attendance at work and availability for duty equal to the average of the other employees in his bargaining unit and location, for a period of not less than two years following the date of his reinstatement. Should his attendance or availability fall below the average at his location for any three month period during the two years in question, he shall be subject to dismissal, with recourse to arbitration only on the issue of whether the conditions of his reinstatement were honoured.

November 20, 2000

MICHEL G. PICHER
ARBITRATOR