

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3301

Heard in Calgary, Wednesday, 13 November 2002

concerning

CANADIAN PACIFIC RAILWAY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

The issuance of twenty demerits to Conductor R.P. Keeler of Moose Jaw, Saskatchewan.

JOINT STATEMENT OF ISSUE:

On July 30, 2001, Conductor R.P. Keeler provided a formal statement to the Company. On August 14, 2001 his employment record was debited with 20 demerit marks for:

"conduct unbecoming as evidenced by misrepresenting your position and obtaining confidential Company information without the authorization from a third party supplier."

The Union appealed the discipline on the grounds that the investigation was neither fair nor impartial and the evidence adduced at the investigation did not support the Company's decision to render discipline.

The Union seeks the removal of the discipline and the payment of lost wages when unnecessarily held off the working list to supply the formal statement.

The Company has declines the grievance.

FOR THE COUNCIL:

(SGD.) D. H. FINNISON
for: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) C. M. GRAHAM
FOR: GENERAL MANAGER OPERATIONS

There appeared on behalf of the Company:

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| D. Guérin | - Labour Relations Officer, Calgary |
| C. Carroll | - Director, Labour Relations, Calgary |
| J. Copping | - Manger, Labour Relations, Calgary |
| C. M. Graham | - Labour Relations Officer, Calgary |
| J. Huxtable | - Assistant Director, NMC, Calgary |
| R. Miscauisn | - Road Manager, Calgary |

And on behalf of the Council:

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|------------------|-------------------------------------|
| M. A. Church | - Counsel, Toronto |
| L. O. Schillaci | - General Chairperson, Calgary |
| D. H. Finnson | - Vice-General Chairperson, Calgary |
| B. L. McLafferty | - Local Chairperson, Moose Jaw |
| R. P. Keeler | - Grievor |

AWARD OF THE ARBITRATOR

The Council has not established that the grievor was denied a fair and impartial investigation, by reason of the admission into evidence of hearsay documents in the form of reports from a SaskTel supervisor.

The material before the Arbitrator establishes that Conductor R.P. Keeler of Moose Jaw improperly attempted to obtain SaskTel invoices for the cell telephone provided to him and to other employees during the course of his employment. The grievor's explanation for his actions leaves much to be desired. During the course of the Company's investigation Mr. Keeler explained that he wanted to identify certain personal telephone calls which he may have made on the cell phone, to reimburse the Company for the cost of those calls. He was unable, however, to identify any such calls that he might have made. In fact, the telephone records involved do not indicate any personal calls having been made by Mr. Keeler.

Significantly, Mr. Keeler appears to have made five telephone calls to SaskTel between June 12 and July 3, 2001 in the attempt to obtain the information he was seeking. The position of the Company, which is understandable to the Arbitrator, is that this questionable episode has undermined the trust which the Company can have in Mr. Keeler. If, as he claims, his only intention was to reimburse the Company for personal calls, that could easily have been done by simply approaching his supervisor to do so. There can be little doubt but that Mr. Keeler did, for reasons which he best appreciates,

attempt to obtain private and confidential Company information without any proper authority to do so. In the circumstances I am satisfied that he was deserving of discipline, and that the assessment of twenty demerits was merited in the circumstances.

The Arbitrator must, however, agree with counsel for the Council who argues that the circumstances did not justify Mr. Keeler being held out of service for a period of three days. Given the grievor's length of service it is highly doubtful that the incident, however bizarre, would have led to his outright discharge. In the circumstances, therefore, the Arbitrator directs the Company to compensate the grievor for the time he was held out of service.

November 19, 2002

(signed) MICHEL G. PICHER
ARBITRATOR