CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 377

Heard at Montreal, Wednesday, October 11, 1972

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim of employee D.A. Berry, mileage-rated driver, Winnipeg, for reimbursement of wages July 22 to August 5, 1971, inclusive, and for cancellation of discipline assessment.

JOINT STATEMENT OF ISSUE:

July 22, 1971, employee D.A. Berry, was involved in an accident. Article 17.1 of the Agreement provides.

> Discipline and Grievances
>
> An employee shall not be disciplined or dismissed without having had a fair and impartial investigation and his responsibility having been established. An employee may, however, be held out of service for such investigation for a period not exceeding five working days and, when so held out of service, shall be notified in writing of the charges against him.

It is the Union's contention that employee D. A. Berry was not properly notified "in writing of the charges against him" and that, therefore, the discipline was improperly imposed.

The Company disagrees with the Union's contention and contends that discipline was properly assessed.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) L. M. PETERSON	(SGD.) C. C. BAKER
GENERAL CHAIRMAN	DIRECTOR LABOUR RELATIONS AND SAFETY

There appeared on behalf of the Company:

C. C. Baker	– Director, Labour Relations & Safety, Vancouver

And on behalf of the Brotherhood:

L. M. Peterson	– General Chairman, Toronto
G. Moore	– Vice-General Chairman, Toronto
F. C. Sowery	– Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

On July 22, 1971; the grievor, while in the course of his duties as a mileage-rated driver, was involved in a highway accident. On the same day he was notified in writing as follows:

> This is to advise you are hereby suspended from service pending investigation of vehicle accident July 22, 1971.

Later on the same day, an investigation was held at which the grievor was questioned with respect to the incident. Subsequently, on July 30 1971, the grievor was advised of a ten-day suspension The justification for discipline and the severity of the penalty are not themselves put in issue by the joint statement of issue. The question which is in issue before me is whether the Company complied with Article 17.1 of the collective agreement.

Article 17.1 provides that, in every case of discipline, there must be "a fair and impartial investigation" before discipline is imposed. Further, in those cases where an employee is held out of service before discipline is imposed and pending investigation, the employee must be notified in writing of the charges against him. In the instant case the grievor was held out of service, and so he was entitled to the benefit of both those provisions that is, to a hearing, and to notice of the charges.

The notice given the grievor referred explicitly to the incident which gave rise to the discipline, that is, the accident in which the grievor was involved on the day in question. To expect any more detailed statement of the "charges" against the grievor would be to expect the very sort of prejudging of the matter which Article 17.1 is clearly intended to prevent. The discipline could not be determined until after the investigation – Article 17 is very explicit as to that. Where an employee is held out of service even before discipline is decided upon, then he is entitled to know why, that is, what the "charges" are. As in **Case No. 365** (which dealt with somewhat different collective agreement provisions), it is clear that the grievor knew what the investigation was about and that his own conduct was in question. At the investigation, where he was accompanied by another employee, the grievor acknowledged that he had been properly notified. In the circumstances, it can properly be said that the requirement of notification was not met.

It was contended that the hearing was not a "fair and impartial" one, chiefly on the ground that leading questions were put to the grievor. A review of the record of the investigation does not, however, indicate that the questioning was unfair for an investigation of this sort. In such an investigation, leading questions are not necessarily unfair, and in the instant case, where such questions are put, they follow quite naturally from the immediately preceding answers given by the grievor. At the conclusion of the investigation the grievor had nothing to add, and acknowledged that he was satisfied with the manner in which the investigation had been conducted. Having regard to all of the material before me, I am unable to find that the requirements of Article 17.1 were not met.

For the foregoing reasons, it is my conclusion that there was no violation of Article 17.1. The grievance must accordingly be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR