

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 677

Heard at Montreal, Tuesday, October 10th, 1978

Concerning

CANADIAN PACIFIC EXPRESS LTD.

and

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

DISPUTE:

Discipline assessed 39 employees, Lachine Terminal, Montreal, Quebec, for leaving post of duty without permission on April 19, 1978, and participating in an illegal work stoppage.

JOINT STATEMENT OF ISSUE:

The Company assessed 25 demerit marks to each of the 39 employees for the above incident. Of the 39 employees charged, 3 employees, Messrs. S. Martel, J. Marcotte and D. Robillard, were dismissed from service account accumulation of 60 demerits.

The Brotherhood contends the demerits issued were too severe and should have been reduced or cancelled.

The Company contends the discipline was justified.

FOR THE EMPLOYEES:

(SGD.) L. M. PETERSON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. R. SMITH
DIRECTOR, LABOUR RELATIONS AND ADMINISTRATION

There appeared on behalf of the Company:

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| D. Flicker | – Counsel, Canadian Pacific Limited, Montreal |
| D. R. Smith | – Director, Labour Relations & Administration, Toronto |
| D. Cardi | – Labour Relations Officer, CP Rail, Montreal |
| L. Brunelle | – Regional Manager, Montreal |

And on behalf of the Brotherhood:

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| N. Beaulieu | – Counsel, Montreal |
| J. J. Boyce | – Vice General Chairman, Toronto |
| F. W. McNeely | – General Secretary Treasurer, Toronto |
| M. Gauthier | – Local Chairman, Montreal |

AWARD OF THE ARBITRATOR

On the day in question, 42 of the 86 employees working on the afternoon shift at the Lachine Terminal, left their work and congregated at the entrance to the terminal. It seems clear that the employees acted in concert, although it is not clear that they acted in accordance with a common understanding. The statements given by the employees at their investigation vary considerably with respect to the reason or motive for their action. At the hearing of this matter, the Union contended that the employees in question walked off the job to protest the action of the Company in sending home an employee who had refused to perform certain duties to which he had been assigned. This contention, however, really gives the lie to the signed statements of most of the employees concerned.

However that may be, the employees concerned did walk off the job without permission and they knew or ought to have known that it was improper, and a violation of the collective agreement, for them to do so. It does not appear that this was a strike called or authorized by the Union as such, although there does not appear to have been any responsible steps taken by local union officials to deal properly with the matter. Whether the reason for the employees' conduct was that advanced by the Union, or whether there was some other reason, there was certainly no justification or reasonable cause for the employees' action. It was quite clearly wrong and it subjected them to serious disciplinary measures, as for participation in an illegal strike.

The real issue in this case is as to the severity of the penalty imposed. Under a system in which an employee is subject to discharge for the accumulation of 60 demerits, the assessment of 25 demerits is clearly a serious matter. There does not exist, as far as I am aware, any applicable set of guidelines which would make it possible to evaluate with much objectivity the assessment of a number of demerit points for any particular offence. There have been cases in which the assessment of demerit points for certain offences has been reviewed, and there are as well, in other areas of employment, some cases which have dealt with the matter of the appropriate penalty for participation in an illegal strike. Obviously, much will depend in any case on the particular circumstances involved as well as on the more general considerations relating to the employment situation which might be material. The issue to be determined is, in general terms, whether the particular penalty imposed goes beyond the range of reasonable disciplinary responses to the situation.

As I have indicated, participation in any event in the nature of an illegal strike is a serious offence and a relatively heavy penalty may be expected. In my view, assessment of as many as twenty demerits, while a severe penalty, could not really be said to be excessive. While it is hard to justify fine distinctions in these matters, I do consider that a penalty of twenty-five demerits, where it is assessed as a general penalty to a substantial group of either misguided or uncomprehending employees, is excessive. I would observe that it was stated at the hearing (with respect to another matter) that the Company underwent some three illegal strikes during a certain period. (The matter is put in question by the Union, and I make no finding on it). If that were so, however, and if the Company had consistently applied the discipline of assessing twenty demerits to those who took part, then (assuming the events were sufficiently separate to allow the penalty to be known in each case) any employees who participated in all three such strikes would – in my view – be subject to discharge. Such an accumulation of discipline would satisfy the requirements of a system of progressive discipline, translated into the terms of a point system.

Accordingly, I conclude that a penalty of twenty-five demerits was excessive, although a penalty of twenty demerits would not have been. It is therefore my award that the disciplinary records of the employees concerned be amended to show twenty, rather than twenty-five, demerits. This will, it appears, require the reinstatement of two employees who would thus have records totalling fifty-five demerits rather than sixty. Those two persons, Messrs. Marcotte and Robillard, are entitled to reinstatement without loss of seniority and with compensation for loss of regular earnings, although I award that their discipline records should show the twenty demerits in question as assessed on October 10, 1978. Another employee, Mr. Martel, was subject to discharge for accumulation of sixty demerits in any event.

(signed) J. F. W. WEATHERILL
ARBITRATOR