

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 706

Heard at Montreal, Thursday, April 12th, 1979

Concerning

CANADIAN PACIFIC EXPRESS LTD.

and

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

DISPUTE:

Concerning discipline assessed the following twenty-eight employees:

S. Scurra, J. Emond, D. Lapointe, J.P. Gladu, A. Schanck, R. Constant, G. Duval,
R. Lebeau, D. Gendreau, F. Downey, P. Whelan, S. Marticotte, Y. Ouellette,
H. Auchinleck, F. Young, P. McCarthy, G. Chevalier, G. Poirier, R. Levesque,
J.P. Belisle, G. Fontaine, G. Grenier, P. Beaudin, G. Monette, Y. Lapointe,
A. Beauchamp, J.W. Robinson

JOINT STATEMENT OF ISSUE:

On June 2, 1978, the above-named employees were amongst a large number of employees who failed to report for work and each was assessed 10 demerits.

The Union contends the discipline assessed the above-named employees was excessive. The Company contends the discipline should stand.

FOR THE EMPLOYEES:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. R. SMITH
DIRECTOR, INDUSTRIAL RELATIONS

There appeared on behalf of the Company:

L. Brunelle	– Regional Manager, Montreal
D. R. Smith	– Director, Industrial Relations, Personnel and Administration, Toronto
B. D. Neill	– Manager Labour Relations, Toronto
D. Cardi	– Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

F. W. McNeely	– General Secretary Treasurer, Toronto
G. Moore	– Vice-General Chairman, Moose Jaw
J. Crabb	– Vice-General Chairman, Toronto

AWARD OF THE ARBITRATOR

On the day in question some 273 employees, including the grievors, failed to report for duty. Some 61 employees did report. Of the 273 who did not report one was, upon investigation, found to have had a satisfactory justification for his absence from work. The others, including the grievors, were considered not to have satisfactory reasons for absence, and all 272 of them were assessed ten demerits.

Of the twenty-eight cases in issue here, none was singled out as turning on its particular facts: the grievors, like the other employees who were assessed ten demerits, did not report for work because of some crowding or picketing which was taking place near one of the entrances to the Company's terminal. This quite clearly related to an illegal work stoppage which had begun at the terminal the previous evening.

The grievors made no serious effort to get to work, although it is clear from the material before me that such efforts would have been successful. One of the grievors, in his investigation, stated that he was "scared to enter account of physical harm", but he did not specify who or what threats had been made. Another grievor stated that when he came to the gate "j'ai vu deux policiers à la porte et je m'en suis retourné". From a review of all the grievors' statements it is clear that there was no substantial threat of violence and no real hindrance to their reporting for work.

It was the Union's contention that the grievors were uncertain of what to do, and did not wish to add to an apparently volatile situation. Their duty of course, was to make reasonable efforts to report for work. On the material before me, they did not make such efforts. Their statements, taken as a whole reveal a "follow-the-crowd" or an "it's not my business", attitude. It was, however, their business to report for work. They failed to do that and there was not, in the circumstances of this case, sufficient justification for such failure.

The grievors were, therefore, subject to discipline. In my view the assessment of ten demerits did not go beyond the range of reasonable disciplinary responses to the situation. Accordingly, the grievances must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR