

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 768

Heard at Montreal, Tuesday, September 9, 1980

Concerning

**CANADIAN PACIFIC EXPRESS LTD.**

and

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

### **DISPUTE:**

The assessing of twenty demerit marks to employee M. Dowhy, Obico Terminal, for using abusive and foul language.

### **JOINT STATEMENT OF ISSUE:**

May 13th, 1980, employee M. Dowhy was summoned to the Coordinator's Office (Mr. E. Edghill) to answer other charges, and upon leaving it is alleged he used abusive and foul language.

The employee maintains he did not use abusive and foul language and consequently the Brotherhood requested the twenty demerits be removed from his record.

The Company refused the Brotherhood's request.

### **FOR THE EMPLOYEE:**

**(SGD.) J. J. BOYCE**  
GENERAL CHAIRMAN

### **FOR THE COMPANY:**

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

There appeared on behalf of the Company:

D. R. Smith – Director, Industrial Relations, Personnel & Administration, Toronto  
B. D. Neill – Manager, Labour Relations, Toronto

And on behalf of the Brotherhood:

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

## **AWARD OF THE ARBITRATOR**

From a review of all the material before me, it is my conclusion that the grievor did in fact use foul and abusive language. He did so, I find at or near the conclusion of an interview to which the Coordinator had called him, to ascertain whether or not he was fit for duty, it having been suggested that he was under the influence of alcohol. That matter is dealt with in **Case No. 770**.

While there are some variations in the accounts of precisely what was said, and while the grievor denies any use of foul language, it is my conclusion, as I have noted, that the grievor did use such language. Further, his use of such language was not in the nature of "shop talk" being simply the addition of colorful epithets to otherwise ordinary speech, but was in fact abuse directed at the Coordinator himself, and expressed in obscene terms.

The use of foul and abusive language when dealing with customers or other employees is forbidden by Company rule no. 7. Even without a specific rule, of course, it is obvious that such conduct is wrong, and would justify discipline of the employee who engages in it. In **Case No. 632** discipline for the use of such language was set aside, because the employee was acting as a Union representative at the time of the incident. In the instant case, the grievor was being interviewed by a supervisor for the quite proper purpose of determining whether or not he was fit to work. The use of foul and abusive language directed against the Coordinator was wrong, and the grievor was subject to discipline on that account. The more difficult question in this case is, I think, that of the extent of the penalty imposed on the grievor.

Even if the grievor's only misconduct had been the direction of foul and abusive language at a supervisor, so that the penalty could be seen as attributable only to that offence, it would be my view that (except, perhaps, in the case of a repetition of the offence) twenty demerits was an excessive penalty. In the instant case, however, the grievor's use of such language should properly be considered in the context of his actions and behaviour throughout the evening in question. In this case, and in the two which follow, three grounds of discipline appear, and yet all three should properly be regarded, in my view, as arising out of the same incident, even if that "incident" be thought of as occurring over a period of time. As will be seen in **Case No. 770**, the grievor was assessed very severe discipline for being under the influence of alcohol while on duty. His conduct while in that condition may be analyzed so as to show the separate offences which may have been committed, but in assessing discipline the entire set of them may be considered as a whole. It was not necessary, in my view, for the grievor to have been separately investigated on the "foul language" charge, when that was really an aspect of his misconduct in being under the influence of alcohol.

In the circumstances of this particular case, therefore, I would consider the assessment of demerits together with the suspension imposed for being under the influence of alcohol. That penalty was a severe one, and I do not consider, in all the circumstances, that the addition of demerit points on this other ground was justified.

Accordingly the grievance is allowed to this extent: it is my award that while the disciplinary notation for use of foul and abusive language stands, the twenty demerits is to be removed from the grievor's record.

**(signed) J. F. W. WEATHERILL**  
**ARBITRATOR**