CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 769

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 demerits to employee M. Dowhy, Obico Terminal, for lying during an investigation.

JOINT STATEMENT OF ISSUE:

May 14th, 1980, employee M. Dowhy, was assessed twenty demerits and later reduced to ten for allegedly lying during the course of an investigation.

The Brotherhood contends employee M. Dowhy did not lie and requested the twenty demerits issued him be removed from his record.

The Company refused the Brotherhood's request.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) J. J. BOYCE	(SGD.) D. R. SMITH
GENERAL CHAIRMAN	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

In this case as, in a somewhat different way, in **Case No.768**, the grievor has been punished separately for what is, essentially, simply an aspect of other misconduct in which he engaged. Here, however, the "offence" the grievor is said to have committed appears to be that of having denied the original offence. Where, after an alleged fact has been denied, it is subsequently found that the allegation was true and that the fact occurred, it would seem to follow that the denial was false. The denial thus becomes a second offence. In the instant case the grievor was investigated with respect to that, and maintained the truth of his earlier denial. Since that earlier denial has been discredited, the grievor would now appear to have committed a third offence, and the matter could continue as long as the grievor protests his innocence. Indeed, one is tempted to ask facetiously if the Union is somehow committing an offence on the grievor's behalf in presenting his case at arbitration, where the facts are found against him.

Lying in the course of an investigation (or anywhere else) is of course wrong. One could conceive of a situation where an employee who had committed no other offence lied, at an investigation or elsewhere, as a part of some scheme perhaps to defraud the Company or to cause harm to some other employee. Such misconduct in itself could certainly give rise to discipline. But where allegations are made against an employee and he denies them, and where it is later found that the allegations are (or reasonably appear to be) true, then while it may follow that the employee may be considered to have lied in the course of the investigation, his "punishment" for the original offence is a final determination of the matter, and must be taken to include punishment in respect of all aspects of it.

In this respect it is of interest to compare what arbitrators have said in certain cases of attempted theft, an offence which would generally lead to discharge. Where the employee acknowledges the offence, that may be taken into consideration and may be a factor in an award of reinstatement. Where the employee denies (wrongly, as it is found) the offence, this lack of frankness may be a factor in upholding his discharge. The mere fact of denying allegations or evidence against oneself is not, however, generally to be taken as a separate industrial offence.

For the foregoing reasons it is my conclusion that the Company did not have just cause to assess discipline against the grievor on the ground stated. The discipline is, therefore, set aside.

(signed) J. F. W. WEATHERILL
ARBITRATOR