

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 781

Heard at Montreal, Wednesday, October 15, 1980

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

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

DISPUTE:

Dismissal of Operator Dana Andrews of the Montreal Division for accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

Operator Dana Andrews was assessed twenty (20) demerit marks on January 22nd, 1980, for late arrival for duty which contributed to his accumulating over sixty (60) demerits.

The Brotherhood contends that the discipline was excessive, not warranted or justified and requested their removal, and reinstatement of the employee for lost time.

The Company declined the request.

FOR THE EMPLOYEE:
(SGD.) D. C. DUQUETTE
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.) J. B. CHABOT
GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

I. J. Waddell	– Labour Relations Officer, Montreal
J. M. Audet	– Transportation Officer, Montreal
J. R. Cuin	– Supervisor, Labour Relations, Montreal
L. R. Field	– Assistant Superintendent, Montreal
R. R. O'Meara	– Assistant Supervisor, Labour Relations, Montreal

And on behalf of the Brotherhood:

D. C. Duquette	– General Chairman, Montreal
J. G. Belhumeur	– Local Chairman, Montreal
D. Andrews	– Grievor

AWARD OF THE ARBITRATOR

The grievor was in fact late in arriving for work on January 15, 1980. He was scheduled to begin work at 0645 that day as an Operator at Windsor Station. This was the first shift of the day (there would be no one already on duty whom the grievor would relieve), and it was important that the grievor arrive at work on time. When he had not reported for work by 0730, the Transportation Officer called his residence and woke him up. The grievor arrived at work at 0755. At his investigation he gave as an explanation (essentially) that he had been drinking the night before and had failed to set his alarm. There is no doubt that the grievor's lateness was improper, and that he was subject to discipline on that account. The substantial issue in this case is as to the extent of the penalty imposed. Generally speaking, it would be my view that for a single offence of lateness, the imposition of twenty demerits is an excessive penalty. While there is no precise scale of penalties for specific offences, it is instructive to consider, by way of contrast, the penalty imposed in **Case No. 775**, where an employee who had deliberately delayed operations for some considerable period of time (a more serious offence than that of this grievor), was assessed fifteen demerits. It would be my view, as a general matter, that for an isolated offence of lateness, a penalty of more than ten demerits would go beyond a reasonable disciplinary response to the situation. (This is not to say that for any instance of lateness, ten demerits could be imposed!).

In every case of discipline, in assessing the severity of the penalty imposed, all of the circumstances and the record of the employee are to be considered. In the instant case, the grievor's disciplinary record shows one penalty of forty-five demerits imposed on November 1 for improper submission of attendance records and a failure to report for duty. What was involved was really a series of offences relating to the grievor's attendance at certain practice assignments. There is no doubt (although the matter is not now in issue) that severe discipline could properly be imposed on the grievor – as was done at that time. The Company's position is that it then took into account certain instances of loyal service in which the grievor had been involved, including the resistance of armed robbers and the diligent reporting of train defects.

I do not think it follows that the value of those instances has somehow been reduced. The grievor remains an employee who has demonstrated loyal service, and who is, it appears, a qualified and capable employee. It also remains that offences related to attendance have brought him at least to the brink of discharge. The grievor is an employee of roughly six years' service. Given that a very substantial penalty had been imposed on him for his misconduct in November, 1979, it does not follow that one instance of lateness some three months later should result in such a penalty as to subject him to discharge. In all of the circumstances it is my view that it has not been shown that a penalty of more than ten demerits was justified. Such a penalty would, no doubt, bring home to the grievor the necessity of firm control over his attendance.

For the foregoing reasons, it is my award that the demerits assessed against the grievor for the incident in question be reduced from twenty to ten. As a result, the grievor is entitled to be reinstated in employment without loss of seniority and with compensation for loss of regular earnings.

(signed) J. F. W. WEATHERILL
ARBITRATOR