

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 798

Heard at Montreal, Tuesday, December 9, 1980

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

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

DISPUTE:

Claim of Mr. G. Fleurent for 20-1/2 hours at the pro rata rate for time lost account incident of March 4, 1980.

JOINT STATEMENT OF ISSUE:

During his shift of March 4, 1980 Electric Truck Operator Mr. G. Fleurent was instructed to unbolt racks. Mr. Fleurent refused and was sent home 4-1/2 hours prior to the termination of his regular shift.

An investigation was held and Mr. Fleurent was given a two (2) day suspension. The Union contended that the circumstances did not warrant a suspension and requested payment for all time held out of service.

The Company denied the Union's request.

FOR THE EMPLOYEE:

(SGD.) W. T. SWAIN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) G. H. COCKBURN
MANAGER OF MATERIALS

There appeared on behalf of the Company:

R. L. Benner	– Assistant Manager of Materials, Montreal
J. P. Deighan	– Assistant Superintendent of Materials, Angus Stores, Montreal
D. Cardi	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

W. T. Swain	– General Chairman, Montreal
M. Sicotte	– Local Chairman, Montreal

AWARD OF THE ARBITRATOR

There is no doubt that the grievor did refuse to do certain work as directed. The work, unbolting certain racks which he was to move with his lift truck, was work the grievor could easily do and, while it may not have come explicitly within his job description, was not an improper assignment. It was certainly not an unlawful or unsafe direction, and did not involve a violation of the collective agreement. It was clearly the grievor's duty to obey it and, if he felt it involved some violation of the collective agreement, to file a grievance later if he wished to do so.

The grievor was, clearly, subject to some form of discipline on this account. The instruction was given clearly, and was repeated. On the grievor's persistent refusal, it was quite appropriate that he be sent home for the balance of his shift. The substantial issue in this case is whether or not some further suspension was appropriate.

The grievor did not have any previous formal disciplinary record, although he had been given a verbal caution about following instructions sometime previously. He did not have much seniority. If it appeared that this was an instance of deliberate undermining of managerial authority, I would have no hesitation in upholding the discipline imposed by the Company. In my view, however, this was not such a case. Nothing in the material before me supports the conclusion that the grievor was motivated by such a purpose. Rather, he seems simply to have stuck obstinately to the rather simplistic view that he could only be required to perform tasks coming strictly within the scope of his job, narrowly considered. In this, he was supported by incorrect advice from his union representative. That does not mean the grievor must not bear responsibility for his actions, but it is one of the circumstances to be considered in assessing the penalty.

In view of the fact that the grievor had been suspended for something over half a shift, in view of his recognition, at the conclusion of the investigation, of his duty to follow instructions and in view of the fact that no formal discipline had previously been imposed, it is my view that the further suspension of the grievor for two days was not justified. Having regard to all of the circumstances, it is my award that the two-day suspension imposed on the grievor be set aside, and that a written warning be substituted therefor. The grievor is entitled to compensation for two days' loss of earnings. He is not entitled to compensation in respect of the 4-1/2 hours for which he was properly sent home.

(signed) J. F. W. WEATHERILL
ARBITRATOR