

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 813

Heard at Montreal, Tuesday, March 10, 1981

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

25 demerit marks assessed Mr. P.A. Arnold account repeated harassment of fellow workers Z.P. DelMundo and C.L. Sevilla, resulting in both tendering their resignations from service on June 18th, 1980.

JOINT STATEMENT OF ISSUE

Under date of June 26, 1980 Mr. P.A. Arnold, Assistant Accountant, Customer Service Centre, Toronto was advised to report to Mr. E.L. Woodman, Supervisor CSC at approximately 1030 hours on Friday, June 27th, to attend an official investigation into circumstances and events resulting in Zenaida P. DelMundo and Celia Sevilla, Clerk-Stenographers, submitting their resignations on June 18th, 1980.

The investigation was held and on July 15, 1980 Mr. Arnold was debited with 25 demerit marks.

The Union contended that Mr. Arnold was convicted on assumptions and hearsay evidence and requested that any reference of this matter be removed from his file and that the 25 demerit marks be removed from his record.

The Company denied the Union's request.

FOR THE EMPLOYEES:

(SGD.) W. T. SWAIN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. P. KELSALL
GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

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| D. Cardi | – Labour Relations Officer, Montreal |
| L. A. Clarke | – Supervisor of Labour Relations, Toronto |
| E. L. Woodman | – Supervisor, Customer Service Centre, Toronto |
| F. Romeo | – Assistant Supervisor of Labour Relations, Toronto |

And on behalf of the Brotherhood:

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| W. T. Swain | – General Chairman, Montreal |
| D. Herbatuk | – Vice-General Chairman, Montreal |
| J. MacPherson | – Vice-General Chairman, Scarborough |

AWARD OF THE ARBITRATOR

The grievor, an Assistant Accountant, is an employee of over twenty years' service. The two employees who resigned did not, it would seem, have long service with the Company, but it seems clear that their resignations were based on what they considered to be harassment and racial slurs directed against them by the Company. Those are serious complaints, and the Company was right to take them seriously and to carry out an investigation, as it did. In these proceedings, of course, the onus is on the Company to show that the grievor did in fact misconduct himself in the manner alleged.

There are a number of particular respects in which it is said that the grievor's conduct was improper. I will deal in turn with each of the allegations made by the other employees.

Mrs. DelMundo alleged first that the grievor had intentionally placed commas in the wrong places in certain figures given to Mrs. DelMundo to be transmitted by telex. The evidence shows that in fact the figures appear to have been deliberately altered in this way, and the grievor did not deny doing it. Mrs. DelMundo noted the anomaly and drew it to a supervisor's attention. No other explanation for this appears than the strange one that the grievor sought (ineffectively) to have Mrs. DelMundo appear to have made a mistake. This was, at the least, mischievous, and would support the imposition of some discipline, perhaps in the form of a reprimand.

Next, it is said that the grievor removed a stencil from Mrs. DelMundo's typewriter. The grievor acknowledges doing that, and explains that he needed to use a typewriter. The matter in itself is trivial, and even in the context of a series of events designed to embarrass Mrs. DelMundo, has no great significance. Next, it is said that the grievor made a practice of following Mrs. DelMundo and standing behind her when she used the Xerox machine. The grievor denies this. Such an outright conflict in the evidence is simply not resolvable in the absence of testimony, and it must be concluded that the Company has not met the onus of establishing this point. Next, it is said that the grievor stared and made faces at Mrs. DelMundo. While the grievor denies this in a general way, the same charge is made by Mrs. Sevilla and is corroborated by the evidence of other employees. From all of the material before me, there is no substantial doubt that the grievor did behave in an unusual and improper way toward the two employees concerned. The same conclusion would apply with respect to his conduct on seeing one or the other of the ladies in a bus or in a corridor or doorway.

While the complainants themselves did not offer any direct evidence of racial slurs, there is evidence from other employees of racial prejudice on the grievor's part. Mrs. Sevilla alleged that the grievor timed her in the morning to see how long it took her to open the mail; the grievor denies that and again, it is not possible to make a finding in that respect on the material before me. In this respect too, then, the Company's case is not made out. There is, however, corroboration of rude and unseemly behaviour on the part of the grievor toward Mrs. Sevilla, and here again the only motive which appears is a racial one.

From all of the material before me it appears, on the balance of probabilities, that the grievor did harass his fellow employees, apparently on racial grounds. Such conduct is obviously improper, and an employer is justified in taking disciplinary action in order to correct it. In my view, there was just cause for the imposition of discipline in the instant case.

As to the penalty imposed, while it is true that not all of the particular allegations against the grievor have been established by sufficient proof, it has been established that the grievor did harass fellow employees on racial grounds, and it is of little moment that every one of the alleged occasions of that may not have been established. Further, the grievor's disciplinary record shows the assessment of fifteen demerits in January 1980, and of ten demerits in April 1980 in respect of behaviour involving improper conduct with respect to fellow employees. Nothing would be altered by slight adjustments in the number of demerits to be assessed in the instant case. Considering the gravity of the offences established, and the nature of the grievor's record, I do not consider that the imposition of twenty-five demerits went beyond the range of reasonable disciplinary responses to the situation in this case. It was important to bring home to the grievor that his behaviour with respect to his fellow employees was quite unacceptable, and that his job was in jeopardy on that account.

For the foregoing reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR