

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 954

Heard at Montreal, Tuesday, June 8, 1982

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Claim by the Union that the Company did not have sufficient reason to suspend Messrs. M. Karwash, Tony Iuorio, Alphonso Iuorio and L. Gasparetti for having been charged with a criminal offence.

JOINT STATEMENT OF ISSUE:

The above-mentioned employees were arrested and charged under Section 383 (I) (a) (ii) of the Criminal Code for receiving secret commissions. Following an investigation pursuant to Article 27 of the Collective Agreement, they were suspended from service pending the determination of the charge against them.

The Union requested that these employees be returned to service and be reimbursed for lost time pending further action as a result of the decision of the Court.

The Company denied the Union request.

FOR THE EMPLOYEES:

(SGD.) W. T. SWAIN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) G. C. MCDONALD
ASSISTANT GENERAL MANAGER, OPERATIONS, INTERMODAL SERVICE

There appeared on behalf of the Company:

D. Cardi – Labour Relations Officer, Montreal
E. E. Neal – Manager, Operations, Intermodal Services, Montreal
W. A. Hand – Region Manager, Intermodal Services, Toronto

And on behalf of the Brotherhood:

W. T. Swain – General Chairman, Montreal
D. Herbatuk – Vice-General Chairman, Montreal
P. Vermette – Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

The charges laid against the grievors arose out of their employment with the Company. If the charges were made out they would (quite apart from any consequences under the criminal law), justify severe discipline, no doubt including discharge, although that issue does not arise in this case.

The instant case does not involve the validity of the charges laid against the grievors, but rather the fact of their having been made. Whether or not it is proper to suspend an employee against whom criminal charges have been laid depends on the facts in each case. Here, the Company conducted an investigation which was, I think, the proper course to follow. Such an investigation could be expected to develop appropriate information which might guide the Company to an appropriate course.

The grievors, however, acting on the advice of counsel, refused to answer any questions bearing substantially on the matter. They were of course entitled to take such a position, but they must also bear the consequences, which include that the Company is not advised of any considerations which might weigh in favour of retaining the grievors at work pending determination of the charges against them. In the instant case, the charges related directly to the grievors' employment. The grievors' duties call for the exercise of responsibility, and I cannot accept that the Company was somehow under an obligation to give them "extra supervision". The charges, it may be noted, were laid by the police and not by the Company.

Having regard to the nature of the offence with which they were charged, the nature of the grievors' work, and their refusal to answer questions at the investigation, it is my view that the Company was justified in suspending them pending the disposition of the charges. The grievances are therefore dismissed.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR