

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 966

Heard at Montreal, Wednesday, June 8, 1982

Concerning

CP EXPRESS [DIVISION OF CANADIAN PACIFIC EXPRESS & TRANSPORT LTD.]

and

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

DISPUTE:

The assessing of ten demerits for insubordination (not submitting stop counts as instructed) to CANPAR employee T. Freeland, Kingston, Ontario.

JOINT STATEMENT OF ISSUE:

December 9th, 1981, employee T. Freeland, CANPAR driver at Kingston, Ontario, was assessed ten demerits for insubordination.

The Brotherhood maintained the assessing of discipline in this case was uncalled for considering it resulted in his dismissal and request the demerits be expunged from his record and he be reinstated with full pay and seniority.

The Company denied the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. R. SMITH
DIRECTOR, INDUSTRIAL, RELATIONS, PERSONNEL & ADMINISTRATION

There appeared on behalf of the Company:

D. R. Smith – Director, Industrial Relations, Toronto
B. D. Neill – Manager, Labour Relations, Toronto
R. A. Colquhoun – Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J. J. Boyce – General Chairman, Toronto
J. Crabb – Vice-General Chairman, Toronto

AWARD OF THE ARBITRATOR

The grievor quite clearly did not submit stop counts as he had been instructed to do. There is no doubt that the grievor was aware that such instructions had been given on a number of occasions. It is not sufficient to say, as the grievor does, that people often forget things and that "we are only human". Of course we are human and of course we often forget things. That does not mean that we should not face the consequences, including, in an industrial context, discipline, of our human frailties.

In the instant case it appears that the grievor did not give great heed to the Company's instructions. While there was no direct refusal to carry out an order, there was a disregard for directions which amounted, in this case, to insubordination and for which the grievor was subject to discipline. Ten demerits was justified, in my view.

The investigation of this matter was not improper, although it was conducted by the Company Official who had given the directions. The grievor was presented with the Official's evidence, and had full opportunity to comment thereon, as he would have had had someone else been conducting the investigation. It would of course be preferable if someone not directly involved were to preside at such investigation but there were, it appears, particular reasons why that was not practicable at the time. There was no violation of the provisions of the Collective Agreement relating to investigations.

For all of the foregoing reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR