

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 967

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:**

Dismissal of CANPAR employee C. Rice, Ottawa, Ontario.

#### **JOINT STATEMENT OF ISSUE:**

September 14, 1981, employee C. Rice, was assessed sixty demerits which resulted in his dismissal due to accumulation of sixty demerits.

The Brotherhood contends the sixty demerits issued were excessive and requested employee C. Rice be reinstated with full seniority and reimbursed all monies lost while held out of service.

The Company declined 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, a Driver Representative, suggested to his supervisor that arrangements be made for him to refuel his Company vehicle at a particular service station, rather than at the Company pumps, and that a credit account be arranged at the service station for that purpose. The Supervisor agreed with the suggestion and such arrangements were made.

Some months later, while training a relief driver, the Supervisor discovered that the service station made a practice of paying cash rebates for fuel purchased there on behalf of the Company. On investigation, it was found that the grievor had accepted such rebates on an almost-daily basis over a period of several months, since making the arrangement.

At his investigation the grievor frankly acknowledged what he had done, and offered to repay the money. There was, of course, little else that he could do. The "cash rebates" were funds to which the Company not the grievor, was entitled. While the occasional receipt of such a "rebate" may not be evidence of a deliberate attempt to defraud (so that the assessment of thirty demerits to another Driver who had occasionally accepted such rebates would be justified), it is too much to believe that the grievor could, in all innocence, accept rebates day after day, from the beginning of the arrangement he had suggested, without being aware that he was pocketing money which was not his.

Even if the assessment of anything less than sixty demerits were to be considered, it would be my view that a penalty of more than thirty demerits would be justified. In the result, given that the grievor already had a record of twenty-five demerits, he would be subject to discharge in any event. In all the circumstances, however, it is my view that the assessment of sixty demerits was justified.

For the foregoing reasons, the grievance is dismissed.

**(signed) J. F. W. WEATHERILL**  
**ARBITRATOR**