

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1044

Heard at Montreal, Tuesday, March 8th, 1983

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

DISPUTE:

Discipline imposed on B. Pereira, Obico Terminal, Toronto, Ontario, for (alleged) repeated failure to report for duty on October 1st and 4th, 1982.

JOINT STATEMENT OF ISSUE:

The Union contends that the discipline is unjust and contrary to Article 8.7 of the Collective Agreement. The discipline is also excessive and contrary to the law (see Section 184 of the Canada Labour Code and the Constitution Act, 1982, Section 2).

The Company contends that the discipline was duly imposed and appropriate in the circumstances and that the grievance should be dismissed.

FOR THE BROTHERHOOD:

(SGD.) J. CRABB

FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. R. SMITH

DIRECTOR, INDUSTRIAL RELATIONS,

There appeared on behalf of the Company:

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| D. W. Flicker | – Counsel, CP Limited, Montreal |
| D. R. Smith | – Director, Industrial Relations, Personnel & Administration, Toronto |
| B. D. Neill | – Manager, Labour Relations, Toronto |
| A. Hill | – Terminal Manager, Windsor |
| K. Rankin | – Manager, P&D, Toronto |
| J. W. McColgan | – Labour Relations Officer, CP Rail, Montreal |
| P. E. Timpson | – Labour Relations Officer, CP Rail, Montreal |

And on behalf of the Brotherhood:

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| Dave Watson | – Counsel, Toronto |
| J. J. Boyce | – General Chairman, System Board of Adjustment No. 517, Toronto |
| G. Moore | – Vice General Chairman, Toronto |
| J. Crabb | – Vice General Chairman, Toronto |
| M. Gauthier | – vice General Chairman, Toronto |
| B. Periera | – Grievor |

AWARD OF THE ARBITRATOR

The grievor is an employee of some six years' service. He is President of the Local Lodge of the Brotherhood. At the material times, he had thirty merit points on his record.

The grievor did fail to report for work on the occasions in question. He came to the terminal, but did not enter as he was unwilling to cross the picket line which was there at those times. This picket line was in support of a legal strike involving other parties. The grievor was not involved in it. His evidence is that he was afraid to cross the picket line.

Having regard to all of the evidence, including the testimony of the grievor himself, I am satisfied that the grievor sincerely believed that it would be dangerous for him to cross the picket line. This belief would appear to have been based on events which had taken place some years before. At the least, it may be said that the grievor was upset by the idea of crossing the line. I cannot, however, conclude that the grievor's fear was a reasonable one in the circumstances of this case. There was no violence at the material times and places, and there were no direct threats made to the grievor. All but one of the grievor's fellow employees – some 500 persons – crossed the line without incident and carried out their normal work. The grievor was urged by senior Union Officers to report, and he ought, in my view, to have heeded this advice. Much as one may sympathize with the grievor's personal anxieties, his responsibility was to report to work, and there simply did not exist circumstances which would relieve him of that responsibility. As was said in **Case No. 744**, "... the very existence of civilized society calls for the display of a certain degree of fortitude in the face of threatened disorder". In the instant case, there was no substantial threat of that sort.

The grievor was, therefore, properly subject to discipline for failure to report to work without justification. While the grievor's sincerity is to be borne in mind in assessing the discipline imposed, it is also to be noted that the refusal persisted. In my view, the assessment of twenty demerits was not excessive.

Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR