

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1073

Heard at Montreal, Wednesday, April 13th, 1983

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

DISPUTE:

Discipline imposed on T. Sullivan, Obico Terminal, Toronto, Ontario, for (alleged) counselling employees to engage in an illegal work stoppage.

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 Union requests the reinstatement of the grievor with full seniority and back wages.

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. J. BOYCE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. R. SMITH
DIRECTOR, INDUSTRIAL RELATIONS

There appeared on behalf of the Company:

D. W. Flicker	– Counsel, CP. Ltd., Montreal
D. R. Smith	– Director, Industrial Relations, Personnel and Administration, Toronto
B. D. Neill	– Manager, Labour Relations, Toronto
E. F. Schwarz	– Regional Manager, Toronto
K. Rankin	– Manager, P&D, Toronto
J. W. McColgan	– Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

D. Watson	– Counsel, Toronto
J. J. Boyce	– General Chairman, Toronto
J. Crabb	– General Secretary-Treasurer, Toronto
T. Sullivan	– Grievor

AWARD OF THE ARBITRATOR

With respect to the allegations of violation of article 8.7 of the collective agreement, what was said in **Case No. 1072** applies equally here. That is a procedural article permitting a grievance to be brought. It was not violated by the fact of discipline being imposed, and reference to it is inapt.

As to the allegations of contravention of **The Canada Labour Code** and **The Constitution Act**, what was said in **Case No. 1070** applies equally here. In addition to that, however, it is my view that the counselling of an illegal strike by an employee is not accorded any special protection by those statutes.

In the instant case the grievor attended at his employer's premises and distributed leaflets which set out various social and political views (which he was entitled to express) and, in addition, counselled his fellow employees not to report to work and, in effect, to go on an illegal strike. Such conduct is not protected by **The Canada Labour Code**, it is condemned by it. It is not protected by **The Constitution Act**, it is, in effect, condemned by it also, since the illegal conduct urged on others by the grievor would necessarily restrict the employer in the exercise of its constitutionally protected freedoms.

In fact, as I find, the grievor did counsel his fellow employees not to cross a picket line (set up, legally, by members of a separate bargaining unit and against a separate, if related employer), and thus to engage in an illegal strike. A pamphlet which concludes "Not a single worker cross the line!" would be difficult to construe otherwise. It is, I think, no defense that the grievor apparently had no reasonable hope of any substantial success. His goal was, as best he could, to disrupt his employer's operations. The likely futility of the grievor's efforts may, however, be borne in mind in assessing the severity of the penalty imposed.

In this respect, it is my view that the assessment of 30 demerit marks did not go beyond the range of reasonable disciplinary responses to the situation. The grievor was Local Protective Chairman of the Union, and incitement of an illegal strike by a person in such a position would normally attract a very severe penalty. It would appear that the penalty imposed in this case was moderated, perhaps for the above reasons. In any event it is my view that there was just cause for the penalty imposed. Its effect was that the grievor had accumulated 60 demerits, and was subject to discharge.

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

(signed) J. F. W. WEATHERILL
ARBITRATOR