CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1112

Heard at Montreal, Tuesday, July 5, 1983

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Disqualification of Mr. J. Schutz from the position of Trailer/Container Dispatcher.

JOINT STATEMENT OF ISSUE:

On September 3rd, 1982, Mr. J. Schutz was disqualified from the position of Dispatcher due to an inability to complete the assigned duties within the bulletined hours of the position.

The Union contended that the Company was using the "Disqualification" as a corrective measure and the Union requested that Mr. J. Schutz be reinstated on the position of Trailer/Container Dispatcher.

The Company denied the Union request.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) W. T. SWAIN	(SGD.) G. C. MCDONALD
GENERAL CHAIRMAN	ASSISTANT GENERAL MANAGER, OPERATIONS

There appeared on behalf of the Company:

I. R. Roberts	– Regional Assistant Manager, Intermodal Services, Toronto
Gilles Deraiche	– General Supervisor-Dispatch, Intermodal Services, Toronto
P. E. Timpson	– Labour Relations Officer, Industrial Relations, Montreal

And on behalf of the Brotherhood:

P. Vermette	– Vice-General Chairman, Montreal
G. A. Gilligan	– Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

Article 24.4 of the collective agreement is as follows:

> 24.4 An employee assigned to a position by bulletin will receive a full explanation of the duties of the position and must demonstrate his ability to perform the work within a reasonable period of up to thirty calendar days, the length of time to be dependent upon the character of the work. Failing to demonstrate his ability to do the work within the period allowed, he shall be returned to his former position without loss of seniority, and the position shall be awarded to the next senior qualified employee who has applied.

The grievor was assigned by bulletin to a position of Trailer/Container Dispatcher. He was disqualified near the end of the 30-day period, the Company taking the position that he had failed to demonstrate his ability to do the work. In later correspondence, the Company referred to the grievor's having exceeded his lunch period on eight occasions during the 30-day period, and also to his failure to send certain reports required in his job.

The Union's contention is that the grievor was improperly disciplined. This is supported by the reference, in the Company's letter relating to the grievor's disqualification, to the grievor's having exceeded his lunch hour on several occasions. I would agree the imposition of discipline (to which the grievor may have been subject by reason of this lateness), should not be confused with the demonstration of ability to perform work. I would agree as well that demotion or, as here, disqualification, is not, in general, an appropriate disciplinary measure. In particular, demotion – or disqualification – would not be appropriate as a disciplinary measure in respect to attendance offences in a job such as that in question.

In the instant case, however, the material before me establishes that while the grievor's absences from work may have contributed to his not getting his work done, it was with respect to the substantial performance of the work that the Company's decision was made. The grievor had related experience, and was instructed as to the job in question, but failed in a number of respects to meet the job requirements. He did not in fact demonstrate his ability to perform the work within the period allowed. Accordingly, he was properly returned to his former position.

For the foregoing reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR