CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1143

Heard at Montreal, Wednesday, November 2, 1983

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Severe warning given to Mr. S. Duval in connection with Rule No. 13.

JOINT STATEMENT OF ISSUE:

On December 24, 1982, Mr. S. Duval was called to a disciplinary investigation concerning his productivity. As a result of this investigation Mr. Duval was advised that a severe warning had been placed on his file.

The Union claims that the investigating officer acted in an abusive and unreasonable manner during the course of the investigation and has demanded the withdrawal of all disciplinary measures from the employee's file.

The Company has denied the claim.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) PIERRE VERMETTE	(SGD.) G. H. COCKBURN
GENERAL CHAIRMAN	FOR: MANAGER OF MATERIALS

There appeared on behalf of the Company:

R. L. Benner	– Assistant Manager of Materials, Montreal
J. Viens	– Assistant Superintendent of Materials, Montreal
P. E. Timpson	– Labour Relations Officer, Montreal
D. J. David	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

P. Vermette	– Vice-General Chairman, Montreal
C. Pinard	– Local Chairman, L-1267, Montreal

AWARD OF THE ARBITRATOR

The grievor, S. A. Duval, has challenged the propriety of the Company's decision to issue him "a severe warning" for violating Rule 13 (s):

> 13. It is expressly prohibited to:
> (s) Obstruct or restrict work production.

The background circumstances precipitating this grievance are as follows: Mr. Duval is employed as an "Order Picker Storeman" in the Materials Department at Angus Shops, Montreal, Quebec. The productivity standards utilized by the Company for that position were established in 1978 following a study conducted by a Management Consulting firm. The standards required of the grievor in the performance of his job of "Order Picker, Storeman" is set out in the Company's brief as follows (at p. 10):

> PERFORMANCE STANDARDS OR REASONABLE EXPECTANCY (R.E.) WERE CALCULATED FOR ALL FUNCTIONS.
> The standards are fair and workable and only require a productivity level of 80% of work assigned. Expressed differently, the basic is 8 hours. From that figure, one hour is deducted for wash-up periods, coffee and lunch. Employees are expected to be productive for 80% of the remaining 7 hours or 5.6 hours in a day.

On December 16, 1982, the grievor's supervisor filed a report indicating that his productivity for that day was 29%. Or, more precisely, the grievor's productivity for that day indicated that it took him approximately five hours to perform 10 minutes worth of work. As a result, the grievor was notified that an investigation with respect to his productivity on the day in question would take place before the Investigating Officer, Mr. Jacques Viens, on December 24, 1982. Since no facts were adduced during the course of the investigation that could either excuse or explain the grievor's mediocre performance he was subsequently issued, on January 5, 1983, "a severe warning". The grievor seeks in this grievance to have that reprimand expunged from his personal record.

There was no evidence adduced by the grievor to demonstrate that the standards exacted by the Company with respect to the productivity of the position he occupied on the day in question were either unreasonable or arbitrary. Nor was there any evidence adduced to suggest that the grievor by reason of any incapacity was not able to meet those standards. Indeed, on one occasion the grievor is shown to have achieved a 92% proficiency rate in satisfying the standard Accordingly, given that the Employer has established a presumption in favour of just cause for the issuance of "the severe warning", having regard to his level of performance on December 16, 1982, the issue before me is whether the grievor has provided a reason rebutting the propriety of the Employer's recourse to discipline.

The grievor's representative made three arguments challenging the justness of the Company's actions that may be itemized as follows:

1) The Company failed to conduct "a fair and impartial investigation" as required by article 27.1 of the collective agreement prior to the issuance of the severe warning;

2) The Company's supervisors do not exhibit a consistent practice in measuring the productivity of employees under their supervision thereby resulting in inconsistent data in measuring employees' achievement for the performance of the same work;

3) The Company has exhibited favouritism in the selection of those employees who are not disciplined for failing to meet productivity standards from those employees who are disciplined. It is suggested that in this case the grievor has been treated, in light of the foregoing, in an unfair, discriminatory manner.

The grievor's first allegation is based on the charge that on several occasions the grievor and his Trade Union representative requested a recess during the investigation meeting in order to consult with one another in private. Mr. Viens, the Investigating Officer, allowed them the requested recesses but remained in the same room during their conversation. Notwithstanding their request that he leave the room Mr. Viens remained at his desk. Mr. Viens indicated that, indeed, he stayed in the room during their discussion but denied that he was ever asked to leave the room. During the conversation the grievor and his Union representative were located on one side of the room and he was located at his desk on the other side. They carried on their conversation in a low voice. He could not hear, from where he was sitting, the content of their conversation.

In light of the foregoing I find no merit in the grievor's allegation that article 27.1 of the collective agreement was violated thereby vitiating the "severe warning" imposed on the grievor. I have no misgiving in saying that a grievor and his Union representative may, during the course of an investigation contemplated under article 27 find it necessary to consult one another in private. However I cannot discern why, if Mr. Viens refused their request that he leave the room (it being Mr. Vien's office) they simply would not have left the office on their own accord in order to carry on their conversations in the privacy that was needed. In any event, I am satisfied that, despite Mr. Viens' presence, the conversation took place in substantial privacy. Accordingly the Trade Union's challenge vitiating the severe warning by reason of a breach of article 27.1 must be dismissed.

In dealing with the Trade Union's second allegation I am satisfied that except for a Company memorandum dated July 8, 1983, advising each supervisor to check and certify the information contained on the productivity sheets (Relève du volume) there was absolutely no evidence adduced to cast doubt on the accuracy or the consistency of the productivity statements recorded with respect to the employees' work performance. I simply cannot justify a finding that different supervisors had applied different criteria in the application of the Company's productivity standards on the basis of the suspicions that might be generated by the issuance of a single memorandum. Accordingly, the grievor's second argument must be set aside.

The grievor's third allegation suggested that he was singled out for special disciplinary treatment where others who had been equally remiss in meeting the Company's productivity standards were not punished. A list was adduced showing instances where employees had not met the Employer's productivity standards for the purpose of demonstrating the Company's discriminatory treatment of the grievor's infraction. The Company, in reply to this particular allegation, noted that, indeed, eight employees during the months of October 1982 to March 1983 were informed by letter of a severe warning for their poor productivity. These letters on their file are said to have resulted in the desired improvement to those employees' work performance. Some employees who failed to meet productivity standards were simply given verbal warnings for their first infraction. And, other employees who were shown to have very low performance percentages may not have been given any discipline because on the days in question only a half shift was worked. In short, I am satisfied that the grievor has failed to establish its charge that he was singled out for discriminatory treatment at the hands of the Employer.

In summary, the Company has satisfied the onus of showing that the grievor's work performance on December 16, 1982 warranted the disciplinary measure of a severe warning. For all the foregoing reasons, the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR