

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1423

Heard at Montreal, Thursday, October 10 1985

Concerning

CP EXPRESS AND TRANSPORT LTD.

and

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

DISPUTE:

Concerns the removal of fifteen demerit marks from the work record of Mr. B. O'Hara, Edmonton, Alberta, for alleged "refusing to sign a Questions and Answers taken February 15, 1985," regarding refusing to report for duty and fifteen demerit marks for alleged "failure to appear for a Questions and Answers statement on February 21, 1985"

JOINT STATEMENT OF ISSUE:

The Company's position is that this employee failed to appear for a Questions and Answers investigation and refused to sign a Questions and Answers which they considered as insubordination which required discipline through demerits.

The Brotherhood's position is that these so-called investigations were not necessary and must be viewed as punitive which serves no educational purpose, this employee who was on layoff was called into work on Sunday, February 3, 1985, and advised his Supervisor that he had no idea he would be called into work, that he had consumed alcohol and that at 17:30 P.M. that he had more than enough to drink and was wise enough to state that it would be unsafe for himself and the Company if he reported to work.

At no time did this employee walk off the job or refuse to sign a properly conducted investigation. The relief requested is for the removal of the fifteen demerits issued for the alleged refusal to sign a Questions and Answers of February 1?, 1985, regarding refusing to report for duty February 3, 1985, and for the removal of fifteen demerit marks for alleged failure to appear for a Questions and Answers on February 21, 1985.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

N. W. Fosbery – Director, Labour Relations, Toronto

And on behalf of the Brotherhood:

J. J. Boyce – General Chairman, Don Mills

G. Moore – Vice-General Chairman, Moose Jaw

AWARD OF THE ARBITRATOR

At all material times Mr. O'Hara was an Unassigned Warehouseman/Driver who was called in to perform driving duties on February 3, 1985 at 2200 hrs. The grievor did not report as requested because he had been consuming alcoholic beverages that evening. The Company summoned the grievor to an interview on February 15, 1985 with respect to his failure to report for duty.

No disciplinary action resulted from the allegations that precipitated the investigation. Nevertheless, the grievor was disciplined fifteen demerit marks for his refusal to sign the investigation report dated February 15, 1985 and was assessed another fifteen demerit marks for his refusal to attend an investigation scheduled for February 27, 1985 in relation to his refusal to sign.

Irrespective of the grievor's obvious insubordination on the two occasions in question, I am satisfied that the penalties imposed totalling thirty demerit marks offend any effort on the Company's part to adhere to the principle of "progressive discipline". Unlike the collective agreement in **CROA 720** there is no requirement contained in the parties' collective agreement that an investigation report need be signed by the employee. Moreover, the grievor's refusal to sign the report did not adversely affect the Company's recourse to its contents for purposes designed by the investigation. Ironically, the grievor was absolved of any misconduct for his failure to report for work. In short, no real prejudice to the Company accrued by virtue of the grievor's failure to sign the investigation report.

For all the foregoing reasons, I am satisfied that the grievor should have been given a written reprimand for the first offence and a five demerit mark penalty for his second offence. The Company is directed to make the necessary changes to the grievor's personal file.

(signed) DAVID H. KATES
ARBITRATOR