

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1510

Heard at Montreal, Thursday, April 10, 1986

Concerning

CP EXPRESS AND TRANSPORT LIMITED

AND

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

DISPUTE:

The assessing of fifteen demerits and five days suspension to employee B. Henshall, Toronto, Ontario.

JOINT STATEMENT OF ISSUE:

On date of August 9, 1985, employee B. Henshall was assessed fifteen demerits for allegedly failure to obey instruction of authorized personnel, July 24, 1985, and held out of service until July 30, 1985 inclusive.

The Brotherhood requested the fifteen demerits be expunged from his record and reimbursed all monies lost while held out of service. The Company denied the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) N. W. FOSBERY
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

N. W. Fosbery	– Director Labour Relations, CPE&T, Toronto
B. D. Neill	– Director Labour Relations, CP Trucks, Toronto
D. Bennett	– Human Resources Officer, CanPar, Toronto
R. Haggarty	– Witness

And on behalf of the Brotherhood:

J. Crabb	– Vice-General Chairman, Toronto
J. Bechtel	– Vice-General Chairman, Cambridge

AWARD OF THE ARBITRATOR

The Vehicleman's Instruction Manual provides:

The following Rules, if violated, will be sufficient cause for dismissal:

...

(d) Failure to obey instructions of authorized personnel.

The grievor was directed to layover in Cambridge, Ontario during the course of his run on July 23-24, 1985. Instead he returned to his residence in Toronto. He claimed that he was required to attend a dental appointment on the day in question. The Company denied that it was advised of this.

The Company claims that it was warranted under article 30.4 of the collective agreement in requiring the grievor to layover provided it complied with the entitled hotel accommodation and meals.

The Trade Union argued that the Company is misusing, if not abusing, article 30.4 in the circumstances described.

In the last analysis the Trade Union argued that the imposition of a 5 day suspension for being held out of service and the assessment of 15 demerit marks are excessive.

It is my view that the doctrine of an employee's obligation to obey his superior's order and grieve later should apply to the circumstances of this case. Thus if article 30.4 may be assumed to have been abused by the Employer it still would not have justified the grievor's insubordination of the Company's order to layover. Surely, that matter could have been the subject matter of a later grievance.

Because the grievor's infraction may have been the subject of a "dismissible" offence I cannot interfere with the period of his suspension while he was kept out of service pending his Q&A. Nonetheless, I do find 15 demerit marks, when viewed in light of that suspension, is somewhat excessive. Accordingly, the assessment of 15 demerit marks should be adjusted to 5.

I shall remain seized for purposes of implementation.

(signed) DAVID H. KATES
ARBITRATOR