

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1574

Heard at Montreal, Friday, October 17, 1986

Concerning

CANPAR

and

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

DISPUTE:

The assessing of thirty demerits and suspension of employees J. Scervo, Wayne Whalen, and Ron Shanks, CanPar, Montreal, Quebec.

JOINT STATEMENT OF ISSUE:

June 21, 1985, employees J. Scervo, Wayne Whalen and Ron Shanks, were assessed thirty demerits for allegedly failing to participate in an investigation.

The Brotherhood grieved the thirty demerits stating the employees did not refuse to participate, and requested the thirty demerits be expunged from their records and they be reimbursed all monies lost while held out of service.

The Company rejected the Brotherhood's request.

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

(SGD.) B. D. NEILL
DIRECTOR, LABOUR RELATIONS, CP TRUCKS

There appeared on behalf of the Company:

D. Bennett	– Manager Human Resources, Toronto
B. D. Neill	– Director Labour Relations, CP Trucks, Toronto
B. Weinert	– Manager Labour Relations, CPE&T, Toronto

And on behalf of the Brotherhood:

J. J. Boyce	– General Chairman, Toronto
M. Gauthier	– Vice-General Chairman, Montreal
M. Flynn	– Vice-General Chairman, Vancouver
J. Bechtel	– Vice-General Chairman, Toronto
W. Whalen	– Grievor

AWARD OF THE ARBITRATOR

The evidence establishes that the question and answer hearings for each of the three grievors was scheduled to take place at the same time on June 21, 1985. These related to a telephone bomb threat received by the CanPar Montreal Terminal on June 7, 1985. It should be noted that in relation to that event no responsibility was alleged or found on the part of the grievors. It is common ground that the three grievors are the only Union Officers who attend question and answer hearings as employee representatives. It appears that each of them received notice of their own investigations some twenty-four hours before it was scheduled. There is no evidence to establish that any of the three had notice that the other two would have to be in attendance at their own question and answer hearings at the same time. In other words, it would appear that the grievors realized only shortly before the proceedings were to begin that because of the concurrent hearings they could not make use of each other's representation.

The grievors' problem was conveyed to the Company shortly before the hearings were to commence. At that time Mr. Whalen requested that two of the three investigations be rescheduled to allow each of the three employees to retain one of the others to act as representative during the Q&A hearings. When the request was denied, each of the grievors attended his hearing but refused to answer questions, protesting that his procedural rights to Union representation under the collective agreement were being violated. As a result of their conduct 30 demerits were assessed against each of them, although this penalty was reduced to 10 demerits following Step 3 in the grievance procedure.

The severity of a bomb scare, and the seriousness of the investigation surrounding it cannot be taken lightly. That the Company needs to deal thoroughly and expeditiously with such a matter is beyond dispute. On the evidence, it appears that the hearings relating to the three grievors were not scheduled for a full two weeks following the bomb threat being investigated. At the time the Company scheduled the hearings it knew that the three grievors were the only Union representatives who act on behalf of other employees during such hearings. Given the passage of two weeks it is far from clear that the exigencies of time prevented the scheduling of hearings in a way that could have accommodated the right of these employees to be accompanied by the appropriate Union representative. Even if the Company suspected complicity on the part of the grievors, a proposition which was not expressly advanced, it could not curtail their right to representation under the collective agreement.

Article 6.3 guarantees to the employee who is subject to an investigatory hearing that he may be accompanied by "an accredited representative of the union to assist him at the investigation.". It is not denied that in practical terms the three grievors were the only accredited Union representatives responsible for assisting employees in this kind of circumstance. In the result, the Arbitrator must conclude that the grievors' rights to representation under article 6.3 were violated by the Company by its refusal to schedule their investigations.

The demerit marks assessed against the grievors shall therefore be removed from their records and they shall be compensated for any wages and benefits lost as a result of any time for which they were held out of work. I remain seized of this matter in the event of any dispute between the parties regarding the interpretation or implementation of this award.

(signed) MICHEL G. PICHER
ARBITRATOR