

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1597

Heard at Montreal, Thursday, December 11, 1986

Concerning

CP EXPRESS AND TRANSPORT LIMITED

and

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

EX PARTE

DISPUTE:

On or about March 26th, 1986 the Company held an investigation in connection with incorrect rates on Honda waybills; subsequently the Company issued 10 demerits to Mrs. E. Leung for said incident.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Brotherhood's position is that this employee was subject to increased workloads on these dates in question, further, that there were raters who were inexperienced in this department which exasperated the working conditions for this employee on these dates. Also, this employee made every conceivable effort to "catch" these waybills in question before going to the customer through a safe-guard system which involved other employees (common department practice).

The Company to date maintains that the demerits were justified and further, that this employee's performance has not been to date satisfactory. The Brotherhood requests that a letter of reprimand be substituted for the 10 demerits issued.

FOR THE BROTHERHOOD:

(SGD.) MICHAEL W. FLYNN

FOR: SYSTEM GENERAL CHAIRMAN

There appeared on behalf of the Company:

B. Weinert – Manager Labour Relations, Toronto
D. Bennett – Human Resources Officer, Toronto

And on behalf of the Brotherhood:

J. J. Boyce – General Chairman, Toronto
M. Gauthier – Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

It is not denied that the grievor did make an error in the calculation of the waybills in question. This consisted of the misplacement of the decimal point, resulting in an overcharge to the Company's customer. Part of the grievor's explanation was that she was not using her own calculator, which was sent out for repairs. Additionally she stated that she spotted the errors and accordingly sent photocopies and notes of explanation to Mr. Dermott Dunn in the Control Center, pursuant to normal practice, which would permit correction of the errors.

It appears that following the taking of the grievor's statement the Company obtained information from Mr. Dunn, who gave a contrary account. Discipline was then imposed without affording Mrs. Leung an opportunity to know the content of Mr. Dunn's statement or to offer any rebuttal to it. That is plainly contrary to article 8.4 of the collective agreement. Under these circumstances the Arbitrator is compelled to accept the submission of the Union that no weight should be given to the evidence of Mr. Dunn. It is clear that his statement had a material bearing on the decision of the Company to impose discipline in the circumstances. I must find that the failure to give the grievor or the Union access to that information prior to the assessment of discipline amounted to the denial of a fair and impartial investigation, which is a condition precedent to the imposition of discipline under article 8.1 of the collective agreement.

The grievance must therefore be allowed. The 10 demerits charged against the grievor shall be removed from her record forthwith.

(signed) MICHEL G. PICHER
ARBITRATOR