CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2040

Heard at Montreal, Tuesday, 10 July 1990

Concerning

CANADIAN PACIFIC LIMITED

And

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed the records of Conductor R. Crompton, Trainman D. Scott and Locomotive Engineer Trainee J. Zrini of London, Ontario.

JOINT STATEMENT OF ISSUE:

On July 17, 1989, Conductor R. Crompton, Trainman D. Scott and Locomotive Engineer Trainee J. Zrini were involved in an incident for which they received 25, 15 and 20 demerits respectively.

Upon completion of the investigation on July 22, 1989, the Company assessed discipline to the three employees involved on August 11, 1989 by Royal Mail.

UTU Collective Agreement, Article 33, paragraph (d) reads:

> **(d)** An employee will not be disciplined or dismissed until after investigation has been held and until the employee's responsibility is established by assessing the evidence produced and no employee will be required to assume this responsibility in his statement or statements. The employee shall be advised in writing of the decision within 20 days of the date the investigation is completed, i.e. the date the last statement in connection with the investigation is taken except as otherwise mutually agreed.

The Union contends the Company did not comply with the time limits as provided for in Article 33, paragraph (d) and requests that the discipline be removed and that payment for all lost time be made to these three employees.

The Company declined the Union's request and contends that Article 33(d) of the Collective Agreement has been complied with.

FOR THE UNION:	FOR THE COMPANY:
(SGD) J. R. AUSTIN	(SGD) E. S. CAVANAUGH
GENERAL CHAIRPERSON	GENERAL MANAGER, OPERATION & MAINTENANCE, IFS

There appeared on behalf of the Company:

J. H. Blotsky	– Special Duties, Labour Relations, Toronto
B. P. Scott	– Labour Relations Officer, Montreal
R. P. Egan	– Assistant Supervisor Labour Relations, Toronto

And on behalf of the Union:

J. R. Austin	– General Chairperson, Toronto
J. Shannon	– Vice-General Chairperson, Montreal
R. Saranon	– Local Chairperson, Schreiber

S. Keene – Secretary, G.C.A., London

AWARD OF THE ARBITRATOR

The material establishes to the satisfaction of the Arbitrator that the Company made every reasonable attempt to personally notify the three grievors of the decision made in respect of their assessment of discipline on August 11, 1989. While it is arguable that it may have turned over more stones than it did in trying to reach the local chairperson of the Union, who was on a road assignment at the time, I am satisfied that its effort in telephoning his residence was not unreasonable in the circumstances. In the result, the evidence discloses that none of the grievors, nor their local chairperson, was immediately accessible by telephone during the normal business hours of August 11, 1989, which was the final day for notification contemplated under Article 33(d) of the Collective Agreement.

Even if the Arbitrator accepts (and on this point I make no finding) that the Union is correct that communication by normal prepaid mail posted on the final day is not in compliance with the requirements of Article 33(d) of the Collective Agreement, I am not satisfied that the facts here disclosed would constitute a vitiation of the discipline assessed against the grievors. It is not contended that the employees could, by deliberately avoiding service, place the Company in a position whereby it would be unable to assess discipline in compliance with Article 33(d). (There is, of course, no suggestion that they did.) In the Arbitrator's view, however, the same conclusion should obtain where, without fault on the part of anyone, it is shown that the employees were inaccessible to the Company, and that neither they nor their local chairperson could be reached by exercise of due diligence. While the Arbitrator can understand the suggestion of the Union that the employer could have done more by way of attempting to locate the individuals in question I am not prepared to conclude that the efforts which it made, which involved a number of telephone calls, were insufficient in the circumstances.

There is, moreover, no prejudice to the grievors in the result. Under the terms of Article 33(f) they are entitled to appeal the decision "... within 60 days from (their) receipt the decision." In other words, the ability of the employee to fully prepare his or her position, and to respond to the Company's decision, is fully protected insofar as the time during which that must be done does not begin to run until he/ she has actually received the notice of the decision. On the whole, in the particular circumstances of this case, I can find no violation of the rights of the employee under Article 33(d) to be disclosed.

For the foregoing reasons the grievance must be dismissed.

July 13, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR