

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2491

Heard in Calgary, Wednesday, 15 June 1994

concerning

**CANADIAN PACIFIC EXPRESS & TRANSPORT**

and

**TRANSPORTATION COMMUNICATIONS UNION**

**EX PARTE**

### **DISPUTE:**

Employee R. Brault, Calgary, Alberta. Extension of time limits was not granted.

### **EX PARTE STATEMENT OF ISSUE:**

The Union alleges the Company is disregarding article 8 of the collective agreement. The Union asserts that at no time was an extension of time limits granted. The Union requests that all charges against the grievor be dropped and the letters be removed from his file.

The Company denied the Union's request.

### **FOR THE UNION:**

**(SGD.) K. M. GREASLEY**

**for: EXECUTIVE VICE-PRESIDENT**

There appeared on behalf of the Company:

B. F. Weinert	– Director, Labour Relations, Toronto
W. B. Smith	– Area Manager, Alberta
G. Vandal	– Supervisor, Calgary Terminal

And on behalf of the Union:

D. E. Graham	– Vice-President, Regina
K. Greasley	– Assistant Division Vice-President, Calgary
R. Brault	– Grievor

## AWARD OF THE ARBITRATOR

The Union alleges that the Company has failed to follow the requirements of article 8.2 of the collective agreement in respect of discipline assessed against the grievor. The facts underlying the issue are not in substantial dispute. On August 27, 1993 the grievor was allegedly absent from his shift without permission and allegedly engaged in abuse and threats of physical harm to his supervisor. On the same day he went off work due to a medical disability and did not return to regular employment until March of 1994. On September 1, 1993 he was served with a notice of interview which advised him that prior to returning to work he would be subject to a disciplinary interview in regard to the events of August 27. The interview was held on February 24, 1994, as a result of which fifty-five demerits were assessed against Mr. Brault.

Article 8.2 of the collective agreement provides as follows:

**8.2** Whenever an employee is to be interviewed by the Company, with respect to his/her work or his/her conduct in accordance with Article 8.1, an accredited Union Representative must be in attendance, and the employee shall be advised in writing 24 hours in advance of such interview, including notice of the subject matter of the interview. **Such interview must be held within fourteen (14) calendar days from the date the incident became known to the Company, unless otherwise mutually agreed.** In the event an accredited representative is not reasonably available, a fellow employee, selected by the employee to be interviewed, shall be in attendance. Nothing herein compels an employee to answer any questions.

Any person employed by the Company providing information relating to the subject matter of the interview must be present at the interview and the employee and his Union Representative may ask questions as are felt appropriate and offer rebuttal to such statements.

*(emphasis added)*

In the circumstances of the case at hand the Arbitrator can find no violation of the provision by the Company. While the article contemplates the holding of a disciplinary interview within fourteen calendar days of an incident, it is plainly predicated upon an expectation that the employee will be available in the normal course of events. In the case at hand the grievor was absent by reason a medical infirmity and it was not, in my view, inconsistent with the spirit or intention of article 8.2 for the Employer to await the employee's return to work to conduct an investigation. Moreover, it would, in my view, be improper for the employee or the Union to refuse to extend the time limits upon a reasonable request by the Company in such circumstances. While the cases are not at all fours, the principles discussed in **CROA 1830** would, in my view, apply in the case at hand.

For the foregoing reasons the Arbitrator cannot sustain the position of the Union that there has been a violation of the requirements of article 8 of the collective agreement.

June 21, 1994

**(Sgd.) MICHEL G. PICHER**  
ARBITRATOR