CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 418

Heard at Montreal, Tuesday, September 11, 1973

Concerning

CANADIAN PACIFIC LIMITED (CP RAlL)

and

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

DISPUTE:

The Brotherhood alleges that:

1. Mr. E. E. Slade was improperly disciplined when he was dismissed from service account refusing to per- form regular duties as directed by Supervisors at Lambton Freight Shed, Toronto on January 18, 1973.

   and

2. Article 27.1 of the Collective Agreement was violated when the Company held Mr. E.E. Slade out of service subsequent to the investigation pending a decision on what action should be taken by the Company.

JOINT STATEMENT OF ISSUE:

Mr. E. E. Slade, Checker at Lambton Freight Shed was assigned to unload a trailer of cartons from an F.W. Woolworth trailer at approximately 0001 hours Thursday, January 18, 1973. Mr. Slade refused to carry out these duties without the services of a helper and as a result was withdrawn from service.

An investigation was held on January 22, 1973 after which Mr. Slade continued to be held out of service untii he was notified on February 9th that he had been dismissed.

The Brotherhood claims that the discipline rendered was unwarranted and that the employee should have been returned to service upon completion of the investigation pending a decision of his case and requests the employee be returned to service and be reimbursed for wages lost.

The Company takes the position that, based on the facts developed at the investigation held, dismissal was justified. The Company also states that Article 27.1 was not in fact violated as claimed.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) W. T. SWAIN (SGD.) W. W. STINSON

GENERAL CHAIRMAN GENERAL MANAGER O & M

There appeared on behalf of the Company:

H. E. Lyttle	Supervisor, Labour Relations, CP Rail, Toronto
D. Cardi	Labour Relations Officer, CP Rail, Montreal
G. Harwood	Supervisor, Shed Operations Toronto Division, CP Rail
B. P. Scott	Assistant Supervisor Labour Relations, CP Rail, Toronto

And on behalf of the Brotherhood:

W. T. Swain	General Chairman; B.R.A.C., Montreal
T. Kairns	Vice General Chairman, B.R.A.C., Montreal

AWARD OF THE ARBITRATOR

The grievor was dismissed for refusal to perform certain duties as instructed. The duties to which the grievor was assigned involved the unloading of a trailer of cartons. This work fell within the scope of the grievor's job classification of checker. He refused, however, to carry out this work, and he persisted in this refusal despite repeated and clear directions from supervision.

The reason given by the grievor for his refusal was that there was no helper provided for the job. He acknowledged that he was in fact capable of performing the work in question himself, but contended that it was "normal" for a helper to assist in the work. It does appear that in many cases a helper is assigned to assist in such work, and in fact on the occasion in question the grievor's foreman undertook to see if assistance could be provided. The grievor however, did not commence work as instructed, and in effect made the provision of assistance a condition of his performing any of his assigned tasks.

There is no suggestion that the work to which the grievor was assigned was unsafe or beyond his capacity to perform. While it may have been that helpers were frequently, or even "normally" assigned to assist in such work, there was no absolute necessity for the assignment of a helper, and no obligation on the Company to assign a helper in the circumstances. The instructions given the grievor were proper, and the reason given for his refusal to follow them was not valid. His refusal to perform his properly assigned work was wilful, and there can be no doubt that he was properly subject to discipline for this refusal.

In Case No. 120, even although the employer was itself in violation of the agreement in failing to provide certain supplies for a train, it was held that the grievor had not acted properly in refusing to take out his train. The instant case, of course, is even clearer, because the Company was not in violation of the collective agreement. There are present here none of the factors which in some circumstances would justify a refusal to follow instructions. Arbitration cases have established that in the absence of such justification there is an obligation on employees to accept

directions, even if they are improper, and to file grievances if they so wish. As was said in Case No. 139 the rationale of such rulings is that it is essential that the operation - fundamental to the livelihood of employers and employees - may continue uninterrupted, while the redress to which one or the other may be entitled can be considered and decided in an appropriate fashion. In the instant case, there is no serious suggestion that the grievor was entitled to any redress in any event. What happened was simply a wilful and unjustified refusal to perform his proper job. Certainly the Company was entitled to take strong disciplinary action with respect to that.

As to the imposition of discipline, there are two matters to be considered. One is that the Company's holding the grievor out of service appears to have gone beyond what was contemplated by Article 27 of the collective agreement. The grievor was held out of service pending investigation but this was not for a period in excess of the five working days referred to in Article 27.1. Following investigation, however, the grievor continued to be held out of service, pending a decision by the Company as to the acticn it would take. As to this, the only material provision in the collective agreement is Article 27.6, which requires a decision to be rendered within 21 calendar days of the completion of the investigation. This article does not in itself Justify the holding of an employee out of service for any period. While it may be that in the event of the imposition of discipline, time so held out of service should count as part of the discipline, this would require a determination that a suspension of at least that extent was proper.

Thus, while the holding of the grievor out of service was not justified by Article 27 specifically, it may nevertheless be justified as part of the discipline to which the grievor was certainly subject.

The second matter to be considered with respect to the discipline imposed on the grievor is as to the severity of the penalty. I have already indicated that strong disciplinary action was called for discharge, however, was not, in my view, appropriate, since there is no reason to believe that, upon his return to work after a substantial period of suspension, the grievor would not have been prepared to do his job. There is no evidence of any previous discipline having been imposed. If, after such a suspension; the grievor were to persist in his refusal to work, then it would seem that discharge would be Justified.

In my view, a suspension for a period of three months would have been the greatest penalty that could have come within the range of reasonable disciplinary responses to the situation, and this only because of the grievor's persistent and wilful refusal to work. The period during which the grievor was held out of service pending investigation and decision by the Company should however, form part of the period of suspension.

For the foregoing reasons it is my award that the grievor be reinstated in employment without loss of seniority or other benefits save that his compensation shall be only for loss of regular earnings for the period following April 18, 1973.

J. F. W. WEATHERILL
ARBITRATOR