CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 563

Heard at Montreal, Tuesday, September 14, 1976

Concerning

CANADlAN PAClFlC LlMITED (CP RAIL)

and

BROTHERHOOD OF RAlLWAY, AlRLINE AND STEAMSHlP CLERKS, FRElGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Discipline assessed Mr. R. Crisafi for incident of October 10, 1975 and payment for time held out of service.

JOlNT STATEMENT OF lSSUE:

On October 10, 1975 at 0745 hours Mr. R. Crisafi was advised to report to Mr. Baril, Assistant to General Yardmaster, St. Luc Yard, at 0800 hours for the taking of a statement. Mr. Crisafi did not comply and was therefore charged with insubordination and held out of service for investigation. The investigation took place October 14, 1975. Subsequently Mr. Crisafi was assessed 15 demerit marks for refusal to report to the General Yardmaster's office after completing shift at St. Luc Yard on October 10, 1975 as per instructions received. Mr. Crisafi was returned to service October 17.

The Union requested the Company to remove the 15 demerit marks assessed Mr. Crisafi on the basis that the discipline was too severe and requested that Mr. Crisafi be reimbursed 5 days wages on the basis that the employee was held out of service unnecessarily.

The Company declined the Union's request.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) W. T. SWAlN	(Sgd.) R. A. SWANSON
General Chairman	General Manager Operation & Maintenance

There appeared on behalf of the Company:

M. M. Yorston — Supervisor Labour Relations, CP Rail, Montreal

And on behalf of the Brotherhood:

W. T. Swain — General Chairman, B.R.A.C., Montreal
D. Herbatuk — Vice General Chairman, B.R.A.C., Montreal

AWARD OF THE ARBlTRATOR

The grievor failed to carry out certain of his duties on October 5, 1975. The Company, quite properly, sought to investigate this matter, and on October 10, at 0745, told the grievor to report to his supervisor at the end of his shift. There does not appear to have been any notice in writing or statement of charges with respect to this investigation. The notice, in any event, was extremely short, and in my view was invalid. The grievor refused to report. The reasons which he subsequently gave were that his shift was completed, and that he did not have sufficient time to shave, have breakfast and prepare himself for the investigation. These reasons are, in my view largely specious although it must be stressed that the griever was entitled to written notice, a statement of the charges, and sufficient time to seek the advice of his Union representatives.

Even although the notice given was not sufficient, the grievor was not justified in simply refusing the instruction to attend. The proper course would have been for him to attend and register his protest, and I would add that in the circumstances he would have been Justified in refusing to answer questions. He was not, however, justified in refusing, without giving reasons the order of the superlntendent. He was, therefore, subject to discipline for insubordination.

There is no issue before me as to the grievor's conduct on October 5 1975. What are before me are the questions, first, of the propriety of the grievor's conduct on October 10, and second, of his entitlement to payment for time held out of service from October 10 to October 17 (five working days). The first of these questions has been answered. The grievor's conduct on October 1 was not proper. Discipline was justified, and in view of the grievor's subsequent recalcitrance, I do not think the assessment of fifteen demerits should be altered.

On the second issue, it is true that the collective agreement does contemplate that an employee may be held out of service for investigation for a certain period. Article 27.1 provides as follows:

> "27.1 An employee shall not be disciplined or dismissed until after a fair and impartial investigation has been held and the employee's responsibility is established. An employee may be held out of service for such investigation for a period of not more than five working days and he will be notified in writing of the charges against him."

The grievor was given written notice of the charge of insubordination and he was advised by telephone of the investigation on that matter. While the Company might, under the collective agreement, hold the grievor out of service pending investigation, it is my view that this does not shelter it from the necessity of justifying the penalty which may thus be imposed on an employee. Time out of service may in some cases be counted as part of a penalty (see, for example, C.R.0.A. case No.562), but where it is not considered as a "penalty" by the Company, it is nevertheless a loss to the employee, and unless he is reimbursed therefor the loss is, in effect, a penalty and must be justified.

In the instant case, it is my view that the assessment of fifteen demerits, together with the imposition of what amounts to a five-day suspension went beyond the range of reasonable disciplinary responses to the situation. Whether or not it was reasonable to hold the grievor out of service at all in these circumstances, the facts revealed show that there were not grounds for the imposition of any very severe penalty. lnsubordination is certainly a serious matter, but in the circumstances of this case the Company's own conduct giving fiiteen minutes' oral notice of investigation of an incident which occurred five day's before - deprives it of any solid ground for punishing severely any lapse from the best behaviour.

ln my view then, the grievor should not have been deprived of five day's work, and is entitled to compensation therefor. To that extent the grievance succeeds. Because the grievor was insubordinate, the assessment of fifteen demerit marks stands.

J.F.W. WEATHERILL
ARBITRATOR