CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 595

Heard at Montreal, Tuesday, February 8, 1977

Concerning

CANADlAN PAClFIC LIMITED (CP RAIL)

and

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

DISPUTE:

Claim by the Brotherhood that Mr. P.D. Martin was improperly disciplined when he was dismissed from service for refusing to carry out assigned duties at Lambton Yard on April 5, 1976.

JOINT STATEMENT OF ISSUE:

On April 5, 1976, Mr. Martin was ordered to check the lower yard by Mr. Couture, Assistant Supervisor C.S.C. Mr. Martin did not follow instructions claiming an injured ankle prevented him from doing so.

An investigation was held and Mr. Martin was dismissed from service.

The Union claimed dismissal was not justified and suggested that a two (2) day suspension would have been just discipline in this case and requested Mr. Martin be returned to service and be reimbursed for lost wages less the recommended two (2) day suspension.

The Company denied the Union request.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(Sgd.) W. T. Swain General Chairman	(Sgd.) L. A. Hill General Manager - O&M Eastern Region - CP Rail

There appeared on behalf of the Company:

E. S. Cavanaugh	Supervisor Labour Relations, CP Rail, Toronto
G. D. Smith	Assistant Supervisor Labour Rel'S, CP Rail, Toronto
E. L. Woodman	Supervisor Customer Services Centre,CP Rail, Toronto
B. P. Scott	Assistant Supervisor Labour Relations,CP Rail, Toronto

And on behalf of the Brotherhood:

D. Herbatuk	Vice General Chairman, B.R.A.C., Montreal

J. MacPherson Vice General Chairman, B.R.A.C., Toronto

AWARD OF THE ARBlTRATOR

While there might be some question as to the propriety of including car checking among the grievor's duties, this was work which he had performed in the past, and the grievor was aware that it would be his duty to perform it in any event, even if under protest. He would be justified in refusing to perform such an assignment only if it involved an undue risk to his health or safety or that of others, or was illegal.

The instructions to the grievor to perform car checking did not come within either of these exceptions. The grievor's reason for not performing the work appears to have been that it might cause some pain in his ankle, which he had injured some time previously. The grievor did not, however, take exception to the medical opinion that the work would not be injurious, although it might involve some slight pain which was normal in the circunlstances. The Company had restricted the occasions on which it asked the grievor to perform car checking, because it was aware of the condition of his ankle, but on the day in questIon it was felt necessary to ask him to do the work. lt must be concluded, in the circumstances of this case, that the grievor did not have justification for not doing the work. While some discomfort may have been involved, his health and safety were not in danger, and he ought to have carried out hls assignment.

It appears to be acknowledged that the grievor was properly subject to discipline in this case. The substantial question is as to the severity of the penalty imposed. As to this, the grievor's discipline record is material, as well as the circumstances of the case.

As to the circumstances of the case they do not include anything in the way of insulting or offensive behaviour such as is sometimes found in cases of insubordination. There was no clear challenge to managerial authority but simply a preference ior personal comfort and convenience over duty and responsibility. The grievor had, a short while before, been assessed ten demerits over a very similar incident. W1ere the incident is repeated only a short time later, it would be proper to impose a more sevcre penalty. I do not consider, however, since these two matters appear to constitute the entire disciplinary record of the grievor (who had some five and one-half years' service at the time) that it was proper to go so far as to discharge him.

lt remains that the grievor's offence was, particularly in the light of its having been repeated within a short time, a serious one. In the circumstances, while it is my view that the grievor should be reinstated, this is not a case in which an award of compensation for loss of earnings should be made. Accordingly, it is my award that the grievor be reinstated in employment without loss of seniority, but with compensation for loss of earnings, if any, only for the period from February 14, 1977, until his actual reinstatement. Further, the grievor's discipline record should show twenty demerits for insubordination, to be considered as assessed as of the date of

his reinstatement.

J.F.W. WEATHERILL
ARBITRATOR