

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 673

Heard at Montreal, Tuesday, October 10th, 1978

Concerning

CANADIAN PACIFIC EXPRESS LTD. (CP EXPRESS)

and

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

DISPUTE:

Discipline of employee R. Quessy, Lachine Terminal, for refusal to perform duties outside his work classification.

JOINT STATEMENT OF ISSUE:

April 19, 1978, R. Quessy, was employed as a warehouseman at Lachine Terminal.

Approximately 6.30 p.m. he was requested to drive a vehicle, on Company property, which he refused as it was outside the classification in which he was employed.

The Brotherhood contends the request was improper, therefore the discipline should not have been assessed.

The Company contends that as the employee refused an order from a Supervisor, this was an act of insubordination and therefore the discipline assessed was justified.

FOR THE EMPLOYEE:

(SGD.) L. M. PETERSON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. R. SMITH
DIRECTOR, LABOUR RELATIONS
AND ADMINISTRATION

There appeared on behalf of the Company:

L. Brunelle, Regional Manager, CP Express, Montreal
D. R. Smith, Director, Labour Relations & Administration, CP
Express, Toronto
D. Cardi, Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J. J. Boyce Vice General Chairman, B.R.A.C., Toronto
F. W. McNeely, General Secretary Treasurer, B.R.A.C., Toronto
M. Gauthier, Local Chairman, B.R.A.C., Montreal

AWARD OF THE ARBITRATOR

The grievor is a Warehouseman - Fork Lift Operator. His duties as such are listed as:

"Knowledge of operating a fork lift. General dock duties and any other miscellaneous duties which may be required or assigned".

On April 19, 1978, the grievor was asked to move a truck. This was a task which he had performed in the past; indeed it would appear that such work had become a regular requirement, occupying, on the average, some fifteen minutes of his working day. Certainly the task of operating a truck would come within the scope of the duties of a Vehicleman or of a Vehicleman - Warehouseman. There may be a real question whether such assignment comes properly within the scope of the duties of a Warehouseman - Fork Lift Operator, but when it is considered that that classification is very widely defined, including "any other miscellaneous duties", that the task in question has been performed by that classification in the past, and that it involves a small proportion of the working day, then it must also be recognized that there is at least a strong case to be made for the proposition that the assignment was quite proper.

Whether the assignment was in fact a proper one or not, it was certainly not clearly improper. The task in question is not exclusive to the classifications of Vehicleman or Vehicleman - Warehouseman. If the grievor seriously considered that the assignment was improper, then the correct course for him to follow was to file a grievance, and to accept the assignment until the matter was resolved in the proper way. There was no emergency, no illegality, no sudden change, no irremediable situation, nothing whatever to prevent him from following the proper course, perfectly well known to any union officer or labour relations officer worthy of the name.

The grievor's refusal to carry out the task in question was clearly wrong, and he was subject to discipline on that account. His action was a form of insubordination. I do not, however, consider that there was proper cause for the imposition of thirty demerit points. Such a penalty, in a system where sixty demerits means discharge, is too severe. While the offence involved is a serious one, it is surely one which can be dealt with in successive steps. In the circumstances, it is my view that the assessment of twenty demerits would not have gone beyond the range of reasonable disciplinary responses to the situation. Even that penalty is a relatively severe one, but I bear in mind the circumstances of this case in which the grievor's action bore some relation to a general position being developed by the Union.

For the foregoing reasons, it is my award that the grievor's record be amended to show the assessment of twenty rather than thirty demerits in respect of the incident in question. I make no award of compensation. The grievor was quite properly taken out of service.

J. F. W. WEATHERILL
ARBITRATOR