

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 674

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:

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Demerit marks issued Mr. M. Gauthier, employed at Lachine Terminal,  
Montreal, Quebec, for incident April 19, 1978.

JOINT STATEMENT OF ISSUE:

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Wednesday, April 19, 1978, approximately 2100 hours, certain  
employees at Lachine Terminal left their place of employment and  
gathered outside Company property.

The Company assessed Mr. Gauthier 40 demerit marks for his  
involvement in an illegal work stoppage on April 19, 1978.

The Brotherhood claim employee M. Gauthier was improperly  
disciplined.

The Company claim discipline was justified.

FOR THE EMPLOYEE:

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(SGD.) L. M. PETERSON  
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

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

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

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From the material before me, there is no doubt that there was a work stoppage on the part of employees on April 19, 1978, and that that stoppage was in violation of the collective agreement.

The grievor was not on duty at the time the walkout began, but came to the terminal on being advised that it was taking place. From the material before me, there is little doubt that the grievor himself had planned a work stoppage, but the stoppage that occurred on April 19 was not called or authorized by him.

The grievor arrived at the terminal and, after meeting with employees (who, according to the union's contention, had left work in protest over a fellow employee's being sent home for refusal to accept a work assignment) then met with officials of the Company. While the grievor did not himself call or authorize the illegal strike that was then taking place, by his own actions upon his arrival at the terminal the grievor, who was local chairman of the Union, in fact supported the unlawful strike. He had, of course, an obligation to do everything in his power to bring the unlawful strike to an end, that is, to urge the employees to return to work. Instead, the grievor sought to "end" the strike by having the Company agree to certain quite improper "conditions", namely the departure of the Terminal Operations Manager, and the undertaking of the Company not to make a particular assignment which, as I find, it had every right to make.

Thus, while the grievor was not himself immediately responsible for the outbreak of the unlawful strike, he supported it, and sought to have the Company give in to the improper pressure thus created. This was, as should have been clear to him, a flagrant violation of the collective agreement, and a real disservice to the union (which he may thus have rendered liable in damages) and to his fellow employees, to whom he helped cause a loss of earnings and the imposition of discipline. It was also, no doubt, a cause of loss to the Company.

While participation in an unlawful strike is a serious offence, it is obvious that the serious support of a strike, particularly on the part of a person having authority and likely to be followed, is an even more serious offence. I have, in other cases relating to the same or related incidents, indicated that a penalty of twenty demerits was appropriate in cases of regular participants. The grievor was more than that, and his offence was a more serious one. I think it could not properly be said that in such a case the imposition of forty demerit points went beyond the range of reasonable disciplinary responses to the situation.

Having regard to all the circumstances of the case, it is my conclusion that the Company did have just cause for the imposition of the penalty in question. The grievance is therefore dismissed.

J. F. W. WEATHERILL  
ARBITRATOR