

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 675

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 assessed Mr. G. Lemire Lachine Terminal, for incidents of
April 17 and 19, 1978.

JOINT STATEMENT OF ISSUE:

The Company charged employee G. Lemire with insubordination account
incidents that took place at Lachine Terminal on April 17 and 19,
1978.

Mr. Lemire was held out of service for the period April 21st to May
5th inclusive.

As a result of an investigation conducted April 26, May 1 and 2,
1978, the employee was issued fifty (50) demerit marks.

The Brotherhood contends the charges against employee Lemire were not
sustained and that the demerit marks should be removed and payment
made for time lost account held out of service.

The Company maintains 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:

D.	Flicker	-	Counsel	-	Canadian Pacific Limited, Montreal
D.	Cardi	-	Labour Relations Officer,		CP Rail, Montreal
D. R.	Smith	-	Director, Labour Relations & Administration,		CP Express - Toronto
L.	Brunelle,	-	Regional Manager,		CP Express, Montreal

And on behalf of the Brotherhood:

N.	Beaulieu,	-	Counsel for B.R.A.C.	-	Montreal
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 incidents in which the grievor was involved on the days in question are as follows: 1). At about 1830 on April 17, the grievor, who was still on the Company's premises although his own shift was over and he had punched out, telephoned the Terminal Operations Manager, Mr. Savoie, at his home to protest an assignment of work which had been made to another employee. Challenged by the Operations Manager to do so, the grievor was unable to indicate how the assignment in question was contrary to the collective agreement. Nevertheless the grievor, who was the local lodge President, indicated to the Operations Manager that he would close the plant down over the matter. While the grievor's actual constitutional powers as Union President may be limited, he would nevertheless appear to some extent as a figure of authority, and he plainly considered that he was dealing with a union matter. This way of proceeding was clearly improper and exceeded the bounds of proper union activity. The considerations enunciated in Case No. 632 do not apply here: this is not a case of "freedom of speech" in the context of a union-management meeting. Rather, it is a case of an improper threat of illegal action, made in circumstances where no provocation existed. The grievor was, in my view, subject to discipline in respect of this matter.

2). On the same evening, the grievor spoke to Mr. Kurty, the Night Co-ordinator, protesting the assignment above referred to. Mr. Kurty, further, overheard the grievor's conversation with Mr. Savoie, as did Mr. Lafrance, Vehicle Inspector. There was, however, no substantial misconduct on the grievor's part with respect to those two men on the night in question.

While there is some conflict in the statements of the persons above referred to and others, I am satisfied from the material before me that the grievor did make the improper threat above noted. That is, however, the extent of any substantial wrong-doing on the grievor's part on April 17.

3). On the evening of April 19 the grievor was in the cafeteria speaking to employees and was told by Vehicle Inspector Dube that that was not the place to hold union meetings. The grievor, it is said, told Mr. Dube to go upstairs if he wanted to avoid trouble. Again, there is some conflict in the statements, but it is my conclusion that the grievor did reply roughly to Mr. Dube, although he left the cafeteria very shortly thereafter. While the grievor may have behaved offensively, it was not a matter of any real significance and it is debatable whether it could be the subject of any discipline at all.

4). A little later the grievor was spoken to by Vehicle Inspector Continelli in the valve room. Mr. Continelli advised the grievor to have his card signed, deposit his bills and park his vehicle before making his rounds in the billing room and the lunch room. The grievor replied roughly and aggressively and told Mr. Continelli he would end up receiving a punch in the mouth. This does not appear to have troubled Mr. Continelli much, who replied that he would not be the one to punch in the mouth. Again the grievor's conduct was offensive, but I do not consider that in this instance there was any serious threat involved. It is, again, debatable whether this was an occasion warranting discipline.

5). Still later that evening the grievor was told by the Yard Supervisor, Containers, to leave his department, where he had no business. The grievor replied that he was the union representative and no one would make him leave. It does not appear that the grievor was on any proper union business at the time. It appears that he did leave the area. This again appears to be an instance of misconduct on the grievor's part, in that he was in an area where he had no proper business at the time and no authorization. Again, however, it is not an incident of any great moment.

This case thus involves a number of incidents which appear to have as their connecting thread the grievor's busying himself on what appears to have been improper, or at least misunderstood union activity. In the course of this he interfered to some extent with the work of other employees, he spoke offensively to supervisors, and, more seriously, he made a rather generalized threat to call an illegal strike.

While the events of April 19 do reveal misconduct on the grievor's part, each of them was relatively trivial in itself, although when they are viewed together I think the Company was justified in considering that discipline should be imposed. I would not consider, however, that the assessment of more than ten demerits in respect of the incidents of April 19 was justified. The events of April 17 are related perhaps in terms of a common theme that appears to have preoccupied the grievor during that time, but the threat of an illegal strike constitutes a separate matter and would be a separate ground of discipline. While the threat was a somewhat generalized one, and the grievor did not then pursue it with Mr. Savoie, it was not, as the surrounding and later circumstances show, not an idle one. It was the sort of matter to be taken seriously. In my view, the incident of April 17 would justify the imposition of twenty demerits.

Thus, for the events in question, it is my view that the assessment of a total of thirty demerits, while a heavy penalty, did not go beyond the range of reasonable disciplinary responses to the situation. A total of fifty demerits, leaving the employee virtually on the point of discharge, appears to me to be clearly excessive. Accordingly it is my award that thirty demerits be substituted for fifty on the grievor's record in respect of the incidents in question.

J. F. W. WEATHERILL
ARBITRATOR