

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 676

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:

Demerit marks issued Mr. Gerard Lemire, employed at Lachine Terminal,
Montreal, Quebec, for incident June 2, 1978.

JOINT STATEMENT OF ISSUE:

June 1, 1978, approximately 11.25 p.m., certain employees at Lachine
Terminal gathered, outside Company property, in front of the Lachine
Terminal.

Mr. Lemire was present along with other employees from about 11..25
p.m. June 1st to 9:00 a.m. June 2nd.

The Brotherhood claims employee G. Lemire was improperly disciplined.

The Company claims 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
L.	Brunelle	-	Regional Manager, CP Express, Montreal
D. R.	Smith	-	Director, labour Relations & Administration, CP Exp., Tor.
D.	Cardi	-	Labour Relations Officer, CP Rail, 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

It appears from the material before me that the grievor, although apparently not himself actually scheduled to work at the time, was present at the entrance to the Company's terminal at Lachine on the night of June 1 - 2, 1978, while a number of employees participated in an illegal strike. The grievor, in effect, participated in the strike. He was a union official, but does not appear to have taken - at least not seriously - any of the steps which it was incumbent on him to take in the circumstances. He thus contributed not only to whatever loss may have been caused to the Company by the work interruption, but he also created a serious risk of loss to the union in case the Company brought a grievance against it, and of course helped cause a loss of earnings to his fellow employees.

While the material before me establishes the grievor's participation in an illegal work stoppage, it does not sufficiently establish (although the matter is not clear) that the grievor himself participated in the calling of the strike. I am not satisfied, then, that there was proper cause to treat the grievor as a special case, and to assess him with a substantially higher penalty than that imposed on others. In my view, it has not been shown there was just cause for the imposition of forty-five demerit points.

For reasons set out in Case No. 677, it is my view that for participation in the work stoppage in question, the assessment of twenty demerits would be proper. I do not here deal with the case of other employees who were subject to discipline in respect of the events in question. In the instant case, however, my award is that the penalty, assessed on the grievor be reduced to one of twenty demerits.

The effect of this is that following the events in question the grievor then had a total of fifty demerits standing against him. There was not, then, just cause to discharge the grievor for accumulation of sixty demerits. It is therefore my award that the grievor be reinstated in employment without loss of seniority. I would, however, award that his discipline record show fifty demerits as though they had been assessed effective October 10, 1978. Since I consider that the grievor did not respond to the questions properly put to him at his investigation frankly and honestly, I make no award for compensation.

J. F. W. WEATHERILL
ARBITRATOR