CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 749

Heard at Montreal, Tuesday, April 8,1980

Concerning

CANADIAN PACIFIC EXPRESS LTD.

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATION EMPLOYEES - SYSTEM BRD. OF ADJUSTMENT #517

DISPUTE:

Four-day suspension of Clerk K. Murphy at Cambridge, Ontario.

JOINT STATEMENT OF ISSUE:

On August 20, 1979, Mr. K. Murphy was suspended for four days following an investigation held by the Company.

The Brotherhood appealed on the basis that the Collective Agreement does not provide for suspension after an investigation, claiming that Article 8.1 of the Agreement only provides for this type of action pending an investigation. The Union is claiming that Mr. Murphy be re-imbursed for the four days lost wages.

The Company has declined the Brotherhood's request.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) J. J. BOYCE	(SGD.) D. R. SMITH
GENERAL CHAIRMAN	DIRECTOR, INDUSTRIAL RELATIONS PERSONNEL & ADMINISTRATION

There appeared on behalf of the Company:

D. R. Smith, Director, Industrial Rel's, Personnel & Administration
CP Express Ltd., Toronto

S. J. Samosinski, Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J. J. Boyce, General Chairman, B.R.A.C., Don Mills, Ont.
J. Crabb, Vice General Chairman, B.R.A.C., Toronto
F. W. McNeely, Gen. Secy. Treasurer, B.R.A.C., Toronto
V. P. Gray, District Rep.

AWARD OF THE ARBITRATOR

There appears to be no doubt that the grievor acted improperly in arranging to have a fellow employee take certain unemployment insurance forms from the Company, and in attempting to obtain unemployment insurance payments in circumstances where he was not entitled to them. It is not denied that the grievor was subject to discipline. (He might also have been subject to prosecution, but that of course is a quite separate matter).

The issue before me is not one of the just cause for discipline, but rather one as to the propriety of the particular penalty imposed. The Company did not, as it usually does in discipline cases, assess demerit marks, but rather, after investigation, imposed a five-day (later reduced to a four-day) suspension. The issue is whether or not that was proper.

In my view, tnis was not a case in which a suspension was a proper exercise or management's disciplinary authority. I do not, however, reach this conclusion on the ground advanced by the Union, namely that the Company may only impose suspensions in the particular circumstances described in Article 8.1 (under which an employee may be held out of service pending investigation, ane that it may not impose a suspension once the investigation was over. In my view, this interpretation of Article 8.1 is wrong. The effect of that article is to make the holding of a fair and impartial investigation a condition precedent to an employee's being "disciplined or dismissed". That condition is tempered somewhat by the provision that an employee may be held out of service (for a limited time), pending such investigation. That provision does not, however, carry any necessary implications as to the sort of discipline which may be imposed once an investigation has been held and an employee's liability to discipline established. Article 8.01 does not have the effect of limiting the forms of discipline which the Company may impose, and in a proper case, it would be open to the Company to suspend an employee for whatever period might be appropriate in the circumstances.

While I consider, therefore, that the Company has, as a general matter, power to impose suspensions, I do not consider that that power was properly exercised in this case. The reason for this conclusion is that the Company has committed itseli to, and has fairly consistently applied a system of merit and demerit points as a method of maintaining discipline. It is, indeed, a stated aspect of the Company's policy that suspension may be resorted to in "extreme cases". It would be open to the Company to change its policy, and neither the Union nor the Arbitrator are bound by that policy, but where, as here, the policy has been generally applied then that fact may properly be considered in assessing the penalty imposed in a particular case.

In the instant case, not only must it be said that the case, while serious, was not "extreme", but also it must be borne in mind that the grievor's fellow employee, who seems to me (at least to the extent that the matter is to be viewed as an industrial offence) to be just as blameworthy as the grievor, was assessed twenty demerits. That assessment has not been disputed, and would appear to have been

proper. In my view, a similar penalty ought to have been imposed on the grievor in this case.

Thus, while I consider that the Company has, in a proper case, power to suspend employees as a disciplinary measure, I do not consider that the grievor was properly subject to suspension in this particular case, for the reasons I have given. It is accordingly my award that the four-day suspension be set aside, and that twenty demerits be substituted therefor. The grievor is entitled to compensation for four days' loss of pay.

J. F. W. WEATHERILL
ARBITRATOR