

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 851

Heard at Montreal, Tuesday, July 14, 1981

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

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

DISPUTE:

Dismissal of D. Greenidge account accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

1. Mr. D. Greenidge was charged with being absent without proper authority from July 4th to August 1, 1980, and failure to report for an investigation on July 16, 1980, July 28, 1980 at 0900, July 28th, 1980 at 1300, July 29, 1980 at 0900. An investigation was held on August 7, 1980 and Mr. Greenidge was debited with 40 demerit marks.
2. On August 7, 1980 an investigation was held in connection with Mr. D. Greenidge's behaviour in the presence of supervisors on July 17th, 1980 and he was subsequently debited with 30 demerit marks for insubordinate conduct with supervisors and disturbing fellow employees in their work area while on unauthorized leave of absence.
3. An investigation was held on August 8, 1980 in connection with Mr. D. Greenidge's punctuality during the period May 1, 1980 to May 30, 1980 and as a result his record was debited with 20 demerit marks.
4. Mr. Greenidge was dismissed account accumulation of demerit marks. The Union contended that discipline was not warranted in the above circumstances and requested that the total of 90 demerit marks be removed from his record, that he be returned to service without loss of seniority or other benefits and that he be reimbursed for lost wages.

The Company denied the Union request.

FOR THE EMPLOYEES:

(SGD.) W.T. SWAIN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J.P. KELSALL
GENERAL MANAGER,

OPERATION &
MAINTENANCE

There appeared on behalf of the Company:

R. O'Meara -- Deputy Superintendent, CP Rail, Toronto
D. Cardi -- Labour Relations Officer, CP Rail, Montreal
L.A. Clarke -- Supervisor Labour Relations, CP Rail, Toronto
G. Harwood -- Supervisor Shed Operations, CP Rail, Toronto

And on behalf of the Brotherhood:

W.T. Swain -- General Chairman, BRAC, Montreal
G.A. Gilligan -- Vice-General Secretary-Treasurer, BRAC,
Montreal

AWARD OF THE ARBITRATOR

Discipline was assessed against the grievor on three separate counts. The first of these, in historical order, was for unacceptable punctuality for the month of May, 1980. The grievor's attendance records show that he was a few minutes late - from one to twelve minutes - on every work day but one of that month. At the investigation eventually held with respect to that attendance, the grievor had no substantial denial or explanation to offer. While the various problems and responsibilities which he had might account for occasional lateness, his regular lateness can only show that the grievor did not make adequate arrangements to deal with those problems and with his responsibilities to his employer. It would appear that there is a three- minute "grace" period, before which an employee's pay is not docked, and after which fifteen minutes' pay is docked (where an employee is not more than fifteen minutes late). Quite apart from the effect of lateness on pay, however it remains that persistent lateness, even of a few minutes is a source of annoyance and disruption to the employer and may be a proper ground of discipline. It was such in this case. There is nothing to support the grievor's allegations of racism and discrimination. The grievor had been cautioned in respect of lateness in January, 1980, and had been assessed 10 demerits on that account in April. In the instant case, assessment of 20 demerits was justified.

The second ground of discipline was insubordinate behaviour and disturbing fellow employees on July 17, 1980. On that day the grievor, who was on unauthorized leave of absence, came to the Company's premises to pick up his cheque. He did not go directly to the office, but entered at the far end of the terminal, and gradually made his way to the office some forty minutes later. I have no doubt that this would interfere with others to some extent, although it was not in itself a major offence. In the office, while the grievor's cheque was being brought, two supervisors questioned the grievor as to his absence, and his failure to report for an investigation. Such questions were perfectly proper. The grievor was also told that as he was not wearing safety shoes or his I.D. card, he should not go

into the terminal area. The grievor made no appropriate response to this, but apparently became irate, saying he was no one's boy and would not be ordered about. He did not at that time, as he later did, assert that he was wearing safety shoes and his I.D. card. It is improbable that he was. The grievor also, according to the supervisors' statements, indicated that he was ready for a fight. At the investigation of this matter the grievor gave no serious account of what occurred, simply saying that the supervisors' statements were lies and that they were deliberately acting against him. Apart from their reaction to the grievor's own improper behaviour, however, no motive appears for such conduct. In my view, the grievor was insubordinate on this occasion. In all of the circumstances, it may be that 30 demerits would be too severe a penalty, but I have no doubt that at least 20 demerits would be justified.

The third ground of discipline was the grievor's unauthorized absence from July 4 to August 1, 1980. On July 3rd, shortly before an investigation as to his punctuality was to be conducted, the grievor advised that his wife was sick and that he must go home. He was allowed to do so. On the next day he requested that his annual vacation, scheduled to begin on August 15th, begin instead on July 7th. This request was refused, but the grievor was advised that if he wished to progress the matter further he could do so in writing. The request was then made in writing on July 7th, the stated reason being that the grievor's wife was sick. The grievor was, quite properly, questioned as to the nature of his wife's illness but he refused to answer. In light of that, the request was refused. There was in that none of the discrimination, humiliation or invasion of privacy which the grievor asserted. It was incumbent on the grievor to provide the Company with sufficient information for it to make a reasonable decision. Later that day, the grievor made a written request for "a few months leave of absence", so that he might look after his wife. Again, however, the grievor refused to give any information as to his wife's condition, and his request was denied. The grievor left the premises and did not return until August 5th, apart from coming to pick up his cheque, as noted above. During that period the grievor failed to appear for a number of scheduled investigations, notices of which were delivered to his home, but which he denies receiving.

The grievor was in fact absent without leave, and at the investigation of the matter gave no explanation or justification except to say that his wife was sick. When asked to give some substance to that explanation, he simply became abusive of the Company and its officers. He was in fact absent without leave for approximately a month. Under many Collective Agreements that would in itself have justified the discharge of the employee. In the instant case the grievor was assessed 40 demerits. In my view, there was just cause for that.

In respect of the three heads of discipline dealt with above, assessment of at least 80 demerits has been upheld. The grievor's record at the time stood at 30 demerits. Clearly he had accumulated excessive demerits, and there was just cause for his discharge. Accordingly, the grievance is dismissed.

J.F.W. Weatherill,
Arbitrator.