CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 971

Heard at Montreal, Tuesday, July 13th, 1982

Concerning

CP EXPRESS, DIVISION OF
CANADIAN PACIFIC EXPRESS & TRANSPORT LTD.

and

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

DISPUTE:

The dismissal of probationary employee Dudley Beveridge, CANPAR, Montreal, Quebec, for allegedly using foul language and insubordination.

JOINT STATEMENT OF ISSUE:

October 28th, 1981, employee D. Beveridge was dismissed from service for using foul language and insubordination.

The Brotherhood grieved the dismissal due to the harshness of the discipline and because of the witnesses account of the incident.

The Brotherhood further requested reinstatement and paid all time lost.

The Company declined the Brotherhood's request.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) J. J. BOYCE General Chairman, System Board of Adjustment No. 517	(SGD.) D. R. SMITH Director, Industrial Relations, Personnel and Administration

There appeared on behalf of the Company:

- D. R. Smith - Director, Industrial Relations, Personnel & Administration, CP Express, Toronto
- P. E. Timpson - Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

- F. W. McNeely - General Secretary-Treasurer, BRAC, Toronto
- G. Moore - General Chairman, BRAC, Moose Jaw

AWARD OF THE ARBITRATOR

The grievor was "a new employee" within the meaning of Article 4.2.1 of the Collective Agreement. The requirement that he not be discharged without a proper hearing being held did not apply to him,

as it would to an employee having more than 65 working days' cumulative service : that is clear from the second paragraph of Article 4.2.1. The grievor was simply subject to being "removed for cause which in the opinion of the Company renders him undesirable for its service". The issue is whether or not such cause existed.

The Company's opinion was based on the statements of two supervisors. One of these, Mr. Yumang, states that at about 7:00 p.m. on October 28, 1981, he approached the grievor and asked him to leave the trailer he was loading and to report to another supervisor in the "Stripping Area". He states that the grievor jumped off the truck onto a conveyor belt, swore at the supervisor, and went to the area to which he was directed. There, he kicked a customer's shipment, a dress box, putting a hole in it. The other supervisor states that he saw and heard these things from "the back office".

The union submits that there is a conflict in the evidence relating to this matter,and relies on the statements of two employees. One of these, Mr. Farray, states that the incident could not have been observed by the second supervisor, because at the time "that Dudley (the grievor) was dismissed by Conrad (Yumang)", all the other supervisors were witnessing an incident involving Mr. Farray and his supervisor.

No doubt Mr. Farray's statement is accurate. It refers, however, to the time of the grievor's dismissal, and not to the earlier time of the incident which led to the dismissal. It does not, therefore, contradict either of the supervisors' statements.

The other employee, Mr. Abrams, refers to an incident which took place at the Stripping Area, and following which Mr. Yumang took the grievor to the office. There would not appear to have been any particular misconduct on that occasion. That, again, is simply not the occasion relied on by the Company, and there is no contradiction here of either of the Supervisors' statements. The grievor's own statement, dated January 5, 1982, makes no reierence to any incident, and refers only to a discussion at the time he was discharged.

The material before me, then, in fact consists of uncontradicted written statements by Supervisors setting out grounds on which the Company could properly form the opinion, as it did, that the grievor was undesirable for its service. There was, therefore, no violation of the Collective Agreement in the termination of the grievor's employment, and the grievance is therefore dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.