

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 977

Heard at Montreal, Tuesday, September 14th, 1982

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

DISPUTE:

The termination of Vehicleman Hayball due to the loss of his drivers license, for impaired driving.

JOINT STATEMENT OF ISSUE:

On March 26, employee Hayball was advised that his services were no longer required as he had lost his privileges of driving for a 3-month period.

The Brotherhood contend that Mr. Hayball should have been allowed to exercise his seniority and displace a junior position that did not call for driving duties.

The Company declined the Unions request.

FOR THE BROTHERHOOD:

(SGD.)) F. W. McNEELY
FOR: General Chairman, System Board
of Adjustment No. 517

FOR THE COMPANY:

D. R. SMITH
Director, Industrial Relations,
Personnel and Administration

There appeared on behalf of the Company:

D. R. Smith	- Director, Labour RELations & Administration, CP Express, Toronto
B. D. Neill	- Manager, Labour Relations, CP Express, Toronto
P. E. Timpson	- Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J. J. Boyce	- General Chairman, System Board of Adjustment No. 517, BRAC, Toronto
J. Crabb	- General Secretary Treasurer, BRAC, Toronto
M. Gauthier	- Vice General Chairman, BRAC, Toronto

AWARD OF THE ARBITRATOR

The grievor entered the Company's service on February 19, 1974. He had, according to his statement, a good record. He was discharged on March 26, 1982, because his driving licence had been suspended for three months.

The grievor's licence was suspended following a conviction for impaired driving. Possession of a valid licence is a condition of employment for a Vehicleman. The grievor, through his own fault, was thus unable to perform the functions of his job for three months. He had no right under the Collective Agreement to displace junior employees in these circumstances, nor was the Company under any obligation to provide work for him.

The grievance in this matter appears to have raised a question of compliance with Article 8.1 of the Collective Agreement, which requires that an investigation be held prior to dismissal or the imposition of discipline. In this case, no investigation was held at the time of the grievor's dismissal. One was held, however, on April 8, 1982. There is no question as to the facts and the question of compliance with Article 8.1 was not raised in the Dispute and Joint Statement of Issue.

Generally, an employee who does not present himself willing and able to work will be subject to discharge. There are of course situations where this is not so, as where an employee is sick or injured - unless the sickness or injury involves a permanent or long-term disability. Here, the grievor's disability was a legal one, imposed by reason of his own fault, but it was of limited duration and did not, it appears, relate to misconduct in employment. While such a case is, I think, properly treated as a discipline matter rather than as one of absence due to illness or injury, in assessing the penalty imposed - that is, in determining whether or not there was just cause for discharge - regard may be had to that analogy.

No consideration to the contrary appearing, it would appear that it would have been reasonable to have granted the grievor a leave of absence for the period of his incapacity. There is nothing in the material before me to suggest that the requirements of the service would not permit that. Of course, this case was not presented as a request for leave of absence, and I do not decide it under Article 20 of the Collective Agreement. It is rather, as I have noted, a matter of assessing the appropriateness of the penalty imposed.

In all of the circumstances, and having regard to the issues as they were placed before me in this particular case, it is my conclusion that there was not just cause for dismissal of the grievor, but that a case for compensation for loss of earnings has not been made out. It is my award that the grievor be reinstated in employment forthwith, without loss of seniority, but without compensation.

J. F. W. WEATHERILL,
ARBITRATOR.