

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1002

Heard at Montreal, Tuesday, November 9th, 1982

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

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

DISPUTE:

Discipline assessed to Mr. Daigneault for incident of May 17, 1982.

JOINT STATEMENT OF ISSUE

On May 7, 1982, Messrs. R. Daigneault and P. Dubuc were involved in an altercation. Investigations were conducted, as a result of which 20 demerit marks were placed on Mr. Daigneault's file account violation of Safety Rule No. 1015.

The Union contended the discipline rendered in this case was excessive and not consistent with discipline rendered in similar case and a letter of caution would have been more than sufficient.

The Company denied the Union's request.

FOR THE EMPLOYEE:

(SGD.) W. T. SWAIN
General Chairman

FOR THE COMPANY:

(SGD.) J. B. CHABOT
General Manager
Operation and Maintenance

There appeared on behalf of the Company:

J. Blotsky - Assistant Supervisor Labour Relations, CPR,
Montreal
D. Cardi - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

Pierre Vermette - Vice-General Chairman, BRAC, Montreal
G. Gilligan - Vice-General Chairman, Sec. Tr. BRAC, Montreal
A. Bois - Local Chairman, Local 1086, BRAC, Montreal

AWARD OF THE ARBITRATOR

There is no doubt that the grievor pushed his fellow-employee, Mr. Dubuc. While Mr. Dubuc had been critical of the grievor, and had made a caustic remark about his ability to read, that did not amount to the provocation of an assault.

There was, it should be noted, no fight. There was no reason for

imposing any discipline on Mr. Dubuc. The grievor's pushing Mr. Dubuc was an assault, and he was properly subject to discipline on that account.

In considering the penalty assessed, regard is to be had to the employee's record, and to the circumstances of the incident. In the instant case, the grievor's discipline record was clear. The incident itself was not one of a serious assault intended to cause harm, but was clearly in the nature of a momentary flare-up. The grievor, I find, did not intend to start a fight nor to carry out a continued assault. His shoving of Mr. Dubuc was a result of his anger at the remarks made, and while that does not relieve him of all responsibility, it suggests that this was not an instance in which severe discipline would be appropriate.

Having regard to all of the circumstances, it is my award that the penalty assessed the grievor be reduced from twenty demerits to ten.

J. F. W. WEATHERILL,
ARBITRATOR.