CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1021

Heard at Montreal, Tuesday, December 14, 1982

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

DISPUTE:

The assessing of twenty demerits plus three days lost wages to employee R. Sebastian, CANPAR, St. Catharines, Ontario.

EMPLOYEES' STATEMENT OF ISSUE:

Employee R. Sebastian was assessed twenty demerits and lost three days wages for the alleged charge of insubordination March 5, 1982.

The incident relating to the insurbordination charges against employee R. Sebastian was derived from a grievance meeting regarding another employee. Mr. R. Sebastian is the designated Union Representative for that terminal.

The Brotherhood grieved the assessing of the demerits and suspension requesting they be removed from his record and he be reimbursed for lost wages.

The Company denied the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
General Chairman, System Board
of Adjustment No. 517.

DISPUTE:

Employee R. Sebastian, CANPAR, St. Catharines, Ontario was held out of service three (3) days for investigation on the charge of insubordination and subsequently assessed twenty (20) demerits.

COMPANY'S STATEMENT OF ISSUE:

The employee was insubordinate to the officer in charge, in the presence of other employees on duty in the CANPAR yard, St. Catharines, March 5, 1982.

The Union requested that the time held out of service be paid to the employee and the twenty (20) demerits assessed be removed from his

discipline record. The Company declined the request.

FOR THE COMPANY:

(SGD.) D. R. SMITH
Director, Industrial Relations,
Personnel & 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
G. Moore - Vice-General Chairman, BRAC, Moose Jaw

AWARD OF THE ARBITRATOR

The grievor, a Union Steward, approached by a Supervisor to be witness to the serving of a notice of discipline on another employee, became violently abusive of the Supervisor, and followed him to his office, continuing his profane abuse until the Supervisor went into his office and the grievor, in the company of two other employees, left the premises.

This was clearly improper behaviour and the grievor was subject to discipline on that account.The grievor's offensive and insubordinate language was unprovoked and was sustained. In my view, the assessment of twenty demerits was justified, and it may be observed that the Collective Agreement contemplates that employees may be held out of service for up to five days pending investigation.

The substantial issue in this case is whether the fact that the grievor was a Union Steward protects him from the natural consequences of his improper behaviour. In some circumstances, the fact that an employee is acting in a Union office does indeed exempt him from the ordinary requirements of conduct which may be enforced by the disciplinary process. In Case No. 632 a Union Steward was discharged for "insubordination and gross misconduct" at a meeting called for the discussion of a grievance. Here, however, while it is true that the Supervisor approached the grievor because he was a Union Steward, the situation was an ordinary workplace one, and the grievor was not called on to act in any official capacity. He certainly did not "discuss" the matter (politely or otherwise),but simply indulged himself in a prolonged torrent of abuse. In the circumstances of this case it was the grievor as an individual employee (and not as a Union Representativ who was speaking, and as such he must bear the responsibility for his conduct.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.