CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1045

Heard at Montreal, Tuesday, March 8th, 1983

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

DISPUTE:

Discipline imposed on employee B. Pereira, Obico Terminal, Toronto, Ontario, for (alleged) repeated failure to attend investigations scheduled for October 6, 8, 14 and 19, 1982.

JOINT STATEMENT OF ISSUE:

The Union contends that the discipline is unjust and contrary to Article 8.7 of the Collective Agreement. Further, there is noncompliance by the Company with Article 8.1 and 8.2 of the Collective Agreement (see notices of investigation). The discipline is also excessive. Finally, the discipline is contrary to the law (see Section 184 of the Canada Labour Code and the Constitution Act, 1982, Section 2).

The Company contends that the discipline was duly imposed and appropriate in the circumstances and that the grievance should be dismissed.

FOR THE BROTHERHOOD:

(SGD.) J. CRABB
FOR: General Chairman System Board of Adjustment No. 517.

FOR THE COMPANY:

(SGD.) D. R. SMITH
Director, Industrial Relations, Personnel and Administration

There appeared on behalf of the Company:

D. W. Flicker	- Counsel, CP Limited, Montreal
D. R. Smith	- Director, Industrial Relations, Personnel & Administration, CP Express, Toronto
B. D. Neill	- Manager, Labour Relations, CP Express, Toronto
A. Hill	- Terminal Manager, CP Express, Windsor
K. Rankin	- Manager, P&D, CP Express, Toronto
J. W. McColgan	- Labour Relations Officer, CP Rail, Montreal
P. E. Timpson	- Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

Dave Watson	- Counsel, Toronto
J. J. Boyce	- General Chairman, System Board of Adjustment No. 517, BRAC, Toronto
G. Moore	- Vice General Chairman, BRAC, Toronto
J. Crabb	- Vice General Chairman, BRAC, Toronto
M. Gauthier	- Vice General Chairman, BRAC, Toronto
B. Pereira	- Grievor, Toronto

AWARD OF THE ARBITRATOR

The offence committed by the grievor in this case is, in substance, the same as that committed by him in Case No. 1044. I do not think it should be considered, for the purpose of assessing the penalty, as a repetition of the offence, but rather as a continuation of a course of conduct. That conduct - refusal to report bccause of fear of crossing a picket line - was improper, because the grievor's fear, if real, was not reasonable and not justified in the circumstances. That was held in Case No. 1044 with respect to the grievor's iailure to report to work and it is equally the case here, where the grievor failed to report for an investigation.

While there are situations in which misconduct with respect to an investigation is quite distinct from the misconduct for which the investigation was held, this is a case in which the misconduct is essentially the same act, or set of acts in both cases. The assessment of 20 demerits is not an insignificant penalty, and to assess a total of 40 demerits in the circumstancesof this case, where those circumstances may properly be considered as a whole is excessive, in my view.

It is accordingly my view that the assessment of 20 demerits be removed from the grievor's record, although the disciplinary notation with respect to the days in question may remain, to be attached to that which was upheld in Case No. 1044.

J. F. W. WEATHERILL,
ARBITRATOR.