CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1052

Heard at Montreal, Tuesday, April 12th, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Pacific Region)
and

UNITED TRANSPORTATION UNION

DISPUTE:

The discipline case of Conductor I. G. Smith, Calgary, who was reduced to a Brakeman's position for a period of 45,000 miles.

JOINT STATEMENT OF ISSUE:

An investigation was held in connection with information received from the Railway Transport Committee of the Canadian Transport Commission regarding the speed of train No. 988 on July 20, 1982 at 0015 at Mileage 9.18 Red Deer Subdivision. Following the investigation, Conductor I. G. Smith was advised in Form 104 as follows:

> "Please be informed that you are restricted to service as trainman for 45,000 miles for failing to comply with requirements of Train Order No. 1716 by operating No. 988, which was carrying one or more full carloads of special dangerous coam odities, at 16 miles per hour above authorized speed; violation of Rule 106, paragraph 2, UCOR, Mile 9.18 Red Deer Sub, 0015 July 20th, 1982."

The Union appealed the discipline contending the Company was in violation of Article 32, Clauses (d) and (e) of the Collective Agreement.

The Union contended that demoting Conductor Smith to a Brakeman was not a proper form of discipline for this one offence and it was discriminatory as the Company has used the Brown System of demerit marks for many years for similar cases and this has been the accepted form of discipline by the Company and the Union.

The Company contends that the investigation was conducted in accordance with the terms of Article 32 of the Collective Agreement and that the discipline assessed Conductor I. G. Smith was justified.

FOR THE UNION:

(SGD.) PHILIP P. BURKE
General Chairman

FOR THE COMPANY:

(SGD.) L. A. HILL
General Manager,

There appeared on behalf of the Company:

L. J. Masur	- Superintendent Labour Relations, CPR, Vancouver
B. P. Scott	- Labour Relations Officer, CPR, Montreal
F. R. Shreenan	- Asst. Supt. Labour Relations, CPR, Vancouver

And on behalf of the Union:

Philip P. Burke	- General Chairman, UTU, Calgary
J. H. McLeod	- Vice General Chairman, UTU, Medicine Hat
R. T. O'Brien	- Vice-President, UTU, Ottawa

AWARD OF THE ARBITRATOR

The principle issue raised in this case is whether or not demotion was a proper form of discipline in circumstances. Generally speaking, as I have indicated in other cases (see for example, Case No. 493) demotion is not a proper form of discipline. There are, however, situations in which a demotion for a limited period (not an indefinite one : see Case No. 715) may be proper. This would be so where the offence or "mistake", while going to the very "essence" of the job does not reveal fundamental incompetence. One error does not establish incompetence : see Case No. 558. Reference may also be made in this regard to what was said in the Chatfield Case (C.P.R. and B.R.A.C.; 7 Dec. 70), at p. 8:

> "Of course employees make mistakes from time to time in the performance of any job. In some sorts of jobs these mistakes may relate to the very "essence" of the job, without revealing any fundamental incompetence or unreliability of the employee. In a case such as this, however, the responsibility and the risks involved are so great, and the importance of following a proper procedure so clear, that it can properly be said that the grievor's conduct really does indicate that he could not be relied upon to perform this vital job in the proper manner. It is my conclusion that this was a proper case for a demotion."

In the instant case, while the facts do not establish that the grievor could never "be relied upon to perform this vital job in a proper manner", the matter of observance of speed limitations while carrying special dangerous co?modities is so important that a period of time in a lower position would be justified. A limited demotion, in circumstances such as these, would appear to be preferable to a suspension or to the imposition of demerits.

There were indeed grounds for the imposition of discipline in the instant case, as the grievor himself acknowledged. His train moved through a restricted area at a substantially excessive speed, while carrying special dangerous commodities. This was not a "minor speed violation", and would call for a more severe penalty than the 20 demerits often imposed in such cases. As was noted in Case No. 1038, however, demotion for a period of one year involves a heavy

financial loss. Again, as was noted in that case, no reason is shown for concluding that protracted restriction from performing the work in question would have any beneficial effect. In my view, having regard to all of the circumstances, a six-month demotion would have been appropriate in the circumstances. Demotion for an entire year went beyond the range of reasonable disciplinar responses to the situation.

Accordingly, it is my award that the penalty imposed be reduced to one of six months' demotion, and that the grievor be reinstated to his former position, subject to any intervening seniority claims. He is to be compensated for any loss of earnings occurring after February 4, 1983.

J. F. W. WEATHERILL,
ARBITRATOR