

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1070

Heard at Montreal, Wednesday, April 13th, 1983

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

DISPUTE:

Discipline imposed on T. Sullivan, Obico Terminal, Toronto, Ontario, for (alleged) repeated failure to report for duty on October 1st and 4th, 1982.

JOINT STATEMENT OF ISSUE:

The Union contends that the discipline is unjust and contrary to Article 8.7 of the Collective Agreement. The discipline is also excessive and 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. J. BOYCE
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, CPR, Montreal
D. R. Smith	- Director, Industrial Relations, Personnel and Administration, CP Express, Toronto
B. D. Neill	- Manager, Labour Relations, CP Express, Toronto
E. F. Schwarz	- Regional Manager, CP Express, Toronto
K. Rankin	- Manager, P&D, CP Express, Toronto
J. W. McColgan	- Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

Dave Watson	- Counsel - Toronto
J. J. Boyce	- General Chairman, BRAC, Toronto
Jack Crabb	- General Secretary-Tr. BRAC, Toronto
T. Sullivan	- Grievor, BRAC, Toronto

AWARD OF THE ARBITRATOR

There is no dispute as to the facts. The grievor did not report for work on the days in question. It would appear that, after his arrival in the area of the terminal, he advised the Company that he would not be reporting for work. He was not, however, given permission to be absent.

The grievor was quite frank as to the reason for his failure to report for work. There was a picket line, maintained by members of another trade union, outside the premises. The grievor, because of his own principles, refused to cross the line. One other employee, Mr. Pereira, also refused to cross the line, although it was found in Case No. 1044, that Mr. Pereira (largely because of certain past experiences), sincerely believed that it would be dangerous for him to do so. The grievor had no such belief, and advanced no such excuse. He simply refused to cross the line as a matter of principle. It may be noted that a number of senior Union officers were present, urging employees to report for work - that is, they put forth their best efforts to ensure that no illegal strike by their members took place. These efforts were successful, and all other members of the bargaining unit, some 500 persons, reported to work.

The validity of the grievor's principles is of course not in issue here. What is in issue is the propriety of his conduct with respect to his own employer. That conduct was clearly improper. The employer had its own business to do (there is no evidence that members of the bargaining unit were asked to perform the work of the employees of the other employer, who were legally on strike). The grievor's job required him to attend at work and perform his assigned duties. He put certain of his own principles ahead of his duty to his employer. That was a deliberate choice on his part, and one of the consequences thereof is that he thereby became subject to discipline.

It was contended that the imposition of discipline against the grievor was contrary to the Canada Labour Code and to The Constitution Act, 1982. The provisions of the Canada Labour Code referred to were in Section 184 thereof, and involve, to put the matter very generally, protection of individuals from retaliation or discrimination on account of union membership or activity, or refusal to perform "struck work". In the instant case, the grievor was disciplined because he did not report to work when he should have. There is nothing to suggest that the true motivation of the employer was of the sort contemplated by the Code. To the extent that it is necessary for me to do so in the course of deciding the instant case, I find that there was no violation of the Canada Labour Code in the circumstances.

The portions of The Constitution Act, 1982, to which I was referred are as follows:

- "1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

2. Everyone has the following fundamental freedoms:
 - (a) freedom of conscience and religion:
 - (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication:
 - (c) freedom of peaceful assembly: and
 - (d) freedom of association."

In deciding not to report to work on the days in question the grievor was undoubtedly giving expression to his own beliefs. He was entitled to do that. He could not properly be punished, whether by the state, by his own employer, or anyone else on that account. It must be said that, in giving expression to his own beliefs by not reporting to work, the grievor necessarily restricted (in however small degree), the employer's ability to carry on its business, and to exercise its freedoms. The Constitution Act does not, in my view, require what would in effect be the subsidization of one citizen's beliefs by others, who may not share them, and who are themselves entitled to their own opinions. In the instant case the grievor was not disciplined in any attempt to muzzle the expression of his beliefs. He was disciplined because he was absent from work without permission and without sufficient cause - that is, without such cause as the Company would be required to accept. There was, I find, no violation of The Constitution Act in the circumstances.

In my view, there was just cause for the imposition of discipline, and the penalty assessed - 20 demerits - did not go beyond the range of reasonable disciplinary responses to the situation. Accordingly, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.