

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1071

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 attend investigations scheduled for October 5, 6, 8 and 14, 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 non-compliance by the Company with Article 8.1 and 8.2 of the Collective Agreement (see notices of investigation). 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

This case is, in my view, closely comparable to Case No. 1045. In this case as in that the grievor did not attend an investigation of his failure to report to work for the same reasons which led him not to report in the first place. The grievor did advise the Company that he was not willing to attend at the time scheduled, and asked that the hearing be postponed. There was no defiance of authority or obstruction of the investigation process in any substantial sense. The Company wisely - and I think generously - arranged to have the investigation later, at a location off the Company premises.

For the reasons given in Case No. 1045, it is my view that there was not just cause for the imposition of discipline in the particular circumstances of this case. It is my award that the 20 demerits assessed be removed from the grievor's record.

J. F. W. WEATHERILL,
ARBITRATOR.