

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1133

Heard at Toronto, Wednesday, August 17, 1983  
Concerning

CANADIAN PACIFIC EXPRESS LIMITED  
(Canadian Parcel Delivery)

and

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

EX PARTE

DISPUTE:

Appeal of discipline assessed employee, P. Hesse, Kitchener, Ontario,  
November 2, 1982.

BROTHERHOOD STATEMENT OF ISSUE:

On October 27, 1982, employee, P. Hesse, while working observed Mr. P. Penman, who was watching him, laughing and shaking his head. When employee, P. Hesse, asked as to why he was laughing, P. Penman dropped his attache case and told a clerk to close a window dividing the main office from the drivers room. When employee, P. Hesse, left the drivers room, he was confronted by P. Penman. P. Penman then pushed P. Hesse backwards. At that point employee, P. Hesse, noticed the presence of Mr. E. Wagner and Mr. C. Grothen, Company Manager. When employee, P. Hesse, queried P. Penman as to what he was doing, P. Penman made highly provocative remarks and gestures. The additional facts formed the subject matter of criminal charges, subsequently filed by Company Officers through a police officer. All facts pertaining to this incident are in dispute.

As a result employee, P. Hesse, was assessed thirty demerit marks for:

"Threatening Officers of the Company on October 27,  
1982".

As a result employee, P. Hesse, was discharged for accumulation of demerit marks effective November 2, 1982.

The Union appealed the assessment of thirty demerit marks and the resultant discharge on the grounds that employee, P. Hesse, was dealt with unjustly and that the Company had failed to comply with the provisions of Article 6 of the Collective Agreement. In addition, the discipline was excessive.

The Company declined the appeal.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE  
General Chairman, System Board  
of Adjustment No. 517.  
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
A. D. Salis	- Area Manager, Ontario, CP Express, Toronto
J. N. Bennett	- District Manager, Southwestern Ontario, CP Express, London

And on behalf of the Brotherhood:

D. Watson	- Counsel, Toronto
J. J. Boyce	- General Chairman, BRAC, Toronto
J. Crabb	- General Secretary-Tr. BRAC, Toronto
M. Gauthier	- Vice General Chairman, BRAC, Toronto
J. Bechtel	- Local Chairman, Lodge 2311, BRAC, Cambridge
P. Hesse	- Grievor, BRAC, Kitchener

#### AWARD OF THE ARBITRATOR

Although the facts set out in the Company's brief would, if proved, establish that the grievor did make serious threats against two members of management, the viva voce evidence presented at the hearing does not permit that conclusion to be drawn. The evidence heard on the point was that of the grievor, who denied the charge. The same charge was the subject of a criminal proceeding, but was dismissed. For the purposes of the instant case, however, it is sufficient merely to record that the alleged offence has not been made out, and that just cause for discipline does not appear.

For the foregoing reasons the grievance is allowed. It is my award that the assessment of thirty demerits be removed from the grievor's record. Any further relief will depend on the outcome of the grievor's other grievance presently before me.

(SGD.) J. F. W. WEATHERILL

ARBITRATOR