CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1144

Heard at Montreal, Wednesday, November 2, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

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

DISPUTE:

Warning given to Mr. S. Duval for not having maintained a minimum of productivity of 80%.

JOINT STATEMENT OF ISSUE:

On January 19, 1983, Mr. Duval was called to a disciplinary investigation concerning his productivity of January 11, 1983 As a result of this investigation the employee was advised that a "warning" had been placed on his file.

The Union is demanding the withdrawal of the disciplinary measure due to the fact that the investigation was a violation of Article 27 of the current Collective Agreement, that the statement of the volume was inadequate and ambiguous, and, in short, that there was no just and sufficient reason to order the holding of a disciplinary investigation.

The Company does not agree with the Union's contentions and has denied the grievance.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) PIERRE VER??TTE	(SGD.) G. H. COCKBURN
FOR: W. T. Swain	Manager of Materials
General Chairman.	

There appeared on behalf of the Company:

R. L. Benner	- Asst. Manager of Materials, CPR, Montreal
J. Viens	- Asst. Superintendent of Materials, CPR, Montreal
P. E. Timpson	- Labour Relations Officer, CPR, Montreal
D. J. David	- Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

P. Vermette	- Vice-General Chairman, BRAC, Montreal
C. Pinard	- Local Chairman, L-1267, BRAC, Montreal

AWARD OF THE ARBITRATOR

The grievor, Mr. S. A. Duval, has challeged the propriety of the Company's decision to issue him a warning that was placed on his personal file for his failure on January 11, 1983, to meet the minimum productivity standard of 80% for the performance of work at his position.

This case differs very little in substance from the case hitherto decided in C.R.0.A. Case 1143. In this case the grievor was originally alleged to have schieved only 33.1% of the required productivity This figure was amended upwards to 50.8% as a result of information that was not considered by the grievor's supervisor in recording his productivity for January 11, 1983.

Aside from the submissions that dealt with the impropriety of the investigation that took place on January 19, 1983, the grievor's case is identically the same as the previous case. In this case the trade union argues that Mr. Duval was denied "a fair and impartial" investigation under Article 27.1 of the Collective Agreement because the Investigating Officer, after having granted the grievor and his trade union representative a recess, interrupted their deliberations after twenty minutes. Apparently, Mr. Viens, the Investigating Officer, wished to proceed with the investigation after twenty minutes of the recess had elapsed. No reason was given at the hearing as to why a recess of more than twenty minutes was required and how Mr. Viens' request that the investigation proceed prejudiced the grievor's case. In that light, I have been provided with no cause for vitiating the warning by reason of a violation of Article 27.1.

Indeed, the facts demonstrated that the investigation was "fair and impartial" having regard to the data changes that were made to the benefit of the grievor's work performance on the day in question. Despite these changes the grievor was still shown to have achieved a 50.8% productivity rate for the work required of him at his position. In the absence of any excuse, the employer, given the minimum requirement of an 80% standard, had cause to have recourse to disciplinary action.

Moreover, the Board is satisfied, notwithstanding the submissions made by the trade union, that the employer had cause, in light of a previous incident, to impose the rather mild penalty of a warning. For all the foregoing reasons, the grievance is denied.

DAVID H. KATES,
ARBITRATOR.