CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1532

Heard at Montreal, Thursday, June 12, 1986

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
BOARD OF ADJUSTMENT #14

DISPUTE:

Withdrawal of ten (10) demerit marks assessed to employee R. Dube's disciplinary record.

JOINT STATEMENT OF ISSUE:

On March 22, 1985, Mr. R. Dube was summoned to a disciplinary investigation to clarify the facts on errors arose on March 4, 6, 7, 8, 11 and 15, 1985. Following said investigation, ten (10) demerit marks were affixed to employee's record.

It must be taken into consideration that in the past, Mr. R. Dube was never reprimanded with regards to his quality of work and consequently, the Brotherhood maintains that said disciplinary measure is excessive, due to the fact, the employer was unable to prove there was inability; incompetence or a lack of goodwill from the part of the employee. Therefore, the Brotherhood is claiming the withdrawal of the ten (10) demerit marks from the employee's record.

The Company denied the grievance.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) P. VERMETTE	(SGD.) R. L. BENNER
FOR: J. Manchip	Director of Materials
General Chairman	

There appeared on behalf of the Company:

P. P. Macarone	- Supervisor of Training and Accident Prevention, CPR, Montreal
J. P. Deighan	- Assistant Director of Materials, CPR, Montreal
A. Bourassa	- General Stores Supervisor, CPR, Montreal
C. Denis	- Supervisor 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:

D. J. Bujold - General Chairman, BRAC, Montreal
J. Manchip - General Secretary & Treasurer, BRAC, Montreal
J. Germain - Vice-General Chairman, BRAC, Montreal
Claude Pinard - Local Chairman, Lodge 1267, BRAC
R. Dube - Grievor
Ronald Locas - Observer

AWARD OF THE ARBITRATOR

Because of the similarity of each of the incidents contained in the parties' briefs with respect to the allegations of misconduct that culminated in the grievor's discharge I have decided to consolidate CROA cases #1532, #1534 and #1535.

The grievor has been employed with the company since April 25, 1980. During this period the company apparently encountered no serious difficulty with respect to the grievor's discharge of his duties and responsibilities. Indeed, his assessment report dated July 12, 1984 when the grievor was employed as a maintenance worker indicated a rather flattering description of his qualities.

The grievor's difficulties began when he was transferred to the position of Storeman at the company's materials department, Angus Main Stores. In that capacity the grievor's principal duties was to verify the company's inventory of products. That required him to engage in the "counting" procedure of determining the amount of a particular item against various purchase orders. There is no dispute that a high degree of precision is necessary in order to make the exercise a useful and viable means of inventory control.

It is not my intention to review the numerous incidents relating to the grievor's aberrations in discharging his Storeman's duties in a proper and professional manner. It suffices to say, that in light of the frequency and nature of the infractions committed by the grievor the company had cause to resort to discipline for purposes of correcting the grievor's mistakes. And, in this regard there was no suggestion by the trade union that the grievor did not have the skill, ability or aptitude to perform the rather straightforward functions that were entailed in the performance of that job.

Moreover, the company is seen to apply the policy of progressive discipline by assessing the grievor verbal warnings, ten, twenty and ultimately thirty demerit marks for the infractions committed by the grievor in each of the time frames encompassed by CROA Cases #1532, #1534 and #1535. As a result I am satisfied that the company established a prima facie case for removing the grievor from Storeman's position.

The only issue raised before me (that appeared to be of any cogency) is whether the discharge penalty was the only recourse available to the company in the circumstances.

In this regard it is important to note that the grievor was transferred to the Storeman's position in January, 1985. It appears from the material before me he immediately began to encounter difficulty in performing the storeman's functions. Indeed, after his first disciplinary investigation he requested a transfer out of the

storeman's position to his former position or a position he could more adequately discharge. The company did not accede to that request.

It appears that the grievor, although equipped with the skill and ability to perform the storeman's functions, simply could not adjust to that new position. From my appreciation of the job in this and other cases its duties entail routine work of a most boring and trivial nature. And, arising out of the nature of the work the grievor developed an attitudinal problem that the company has successfully described in each of its briefs. Indeed, the company could not be seen to condone the grievor's misconduct as the work, albeit without stimulation, represented a necessary exercise with respect to the operation of its enterprise.

But in that light was the grievor's discharge the only answer to the dilemma? It is to be noted that the grievor's record suggests no attitudinal problem until he was transferred to the stores position. His attitudinal difficulties lasted a period of approximately six months while employed in the storeman's position. His last assessment report prior to his transfer suggests that the grievor, while employed in a position whose duties he can cope with, does not have an attitudinal problem in providing the company with proper service.

I have considered the pronouncements made in Re United Automobile Workers, Local 35, and Libby McNeil and Libby of Canada Ltd. 23 LAC 287 (Palmer) as pertinent to this case. In that decision the Arbitrator wrote:

> "From their point of view, although she was a willing worker, her work was not satisfactory in that she made too many errors of a repetitive nature, even after having these pointed out to her.
>
> Although she demured on the point it seems that Ms. Kitchnaugh did not have the skills to carry out the duties assigned to her in a satisfactory manner.
>
> The company must, therefore, prove that it had "just cause, not only for removing the grievor from the job in question (as I have already found it had), but also for discharging her from their employment altogether.
>
> In my opinion, therefore, the appropriate action in such a case as this is that the grievor be offered alternative employment in so far as such can be consistent with other provisions of the agreement."

In a like manner I am satisfied that the company, in the grievor's circumstance, might have avoided the necessity for recourse to the discharge penalty had it made an effort to secure another job for the grievor to perform. His record of five years of service where he apparently had not caused the company difficulty warranted that effort. And, indeed, had he been placed in another position, the probability of cause for securing his discharge would most likely have been eliminated.

As a result I direct the grievor's reinstatement to the employment of the company without compensation for the period of his separation between the date of his discharge and the date of his reinstatement to the company's employ. This period is to be treated as a suspension for the culminating incident.

Accordingly, in order to comply with the niceties of the Brown System, the 30 demerit marks for the grievor's last infraction is to be removed.

I shall remain seized.

DAVID H. KATES,
ARBITRATOR.