

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1764

Heard at Montreal, Thursday 10 March 1988

Concerning

CANADIAN PACIFIC LIMITED

And

TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION
(formerly B.R.A.C.)

DISPUTE:

Demotion and loss of wages of S. Hill, Senior Clerk at Calgary
Freight Claim Services.

JOIN STATEMENT OF ISSUE:

S. Hill was demoted from his position of Senior Clerk as a result of
an investigation held by the Company into his work performance.

The Brotherhood contends that Articles 24.4 and 27 of the Collective
Agreement were violated, that the investigation held was judgemental,
unfair and partial; that the procedures followed harassing and that
demotion is not the proper form of discipline.

The Brotherhood also contends that S. Hill was off work account
illness due to the investigation procedures and that lost time and
wages be paid accordingly.

The Company declined the grievance.

FOR THE UNION:

(SGD) D. DEVEAU
General Chairman

FOR THE COMPANY:

(SGD) K. PORTER
Assistant Comptroller
Revenues & Claims

There appeared on behalf of the Company:

P. E. Timpson	- Labour Relations Officer, Montreal
P. C. Delaney	- Personnel Manager, CP Rail Accounting Montreal
K. J. McCaw	- Area Supervisor, Freight Claims Services, Calgary

And on behalf of the Union:

D. Deveau	- General Chairman, Calgary
D. Kent	- Vice-General Chairman, Calgary
S. Hill	- Grievor

AWARD OF THE ARBITRATOR

Mr. Hill has plainly been a good and valued employee of the Company for many years. The sole issue in this case is whether he has demonstrated the skills and knowledge necessary to retain the position of Senior Clerk. It does not appear disputed that the position, as assigned to him in the Calgary office responsible for Freight Claim Services, contains a number of components that are relatively new, many of which involve a close command of the Company's computer system and related resources. While the Company has given Mr. Hill every opportunity to gain familiarity with its computerized operations, the Arbitrator is satisfied, on the material before him, that Mr. Hill has not succeeded in achieving an acceptable standard in that regard. For these reasons I must find that the Company did have grounds to demote the grievor, and I must conclude that the grievance cannot succeed.

There is, however, a human side to this grievance which bears some comment. The position of the Company, which the Arbitrator accepts, is that this is not a case of discipline. In the judgement of his supervisors, Mr. Hill was found to be lacking the attributes necessary to handle the obligations particular to the position of Senior Clerk. That is not a condemnation, and it was not suggested that Mr. Hill, an employee of senior years with more than twenty-five years of service with the Company, has done anything blameworthy or is deserving of any reprimand whatsoever. That being the case, it appears to the Arbitrator extremely unfortunate that Mr. Hill was made the subject of a lengthy Question & Answer investigation conducted by his supervisor, Mr. McCaw, under Article 27, the provision of the Collective Agreement governing investigations leading to discipline and discharge.

Administrative demotion is not contemplated within the terms of Article 27. It appears that several months in advance of the "investigation" and decision to demote the grievor, his supervisor had serious reservations about his ability to perform the job of Senior Clerk. It is not clear, in those circumstances, why a less confrontational procedure than an Article 27 investigation could not have been contemplated. In the result it appears that the grievor suffered a degree of stress which could have been avoided. While the Arbitrator must accept the position of the Company that there is no evidence to conclusively link the ill effects suffered by Mr. Hill and his subsequent period of absence from work to the nineteen hours of questioning over five separate days to which he was subjected by his supervisor, nothing in this award should be construed as condonation or approval of the disturbingly inquisitorial style of Mr. McCaw.

On the material before the Arbitrator it cannot be found that Articles 24.4 and 27 of the Collective Agreement were violated or that the grievor's claim for lost time and wages can be directly attributed to the conduct of Mr. McCaw. Because I am satisfied that the Company was entitled to demote the grievor on the basis that he did not demonstrate the ability required for the position of Senior

Clerk the grievance must be dismissed.

(SGD) MICHEL G. PICHER
ARBITRATOR