CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2174

Heard at Montreal, Tuesday, 10 September 1991

concerning

CANADIAN PACIFIC LIMITED

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Assessment of 5 demerit marks to employees P. Francois and E. Kelley for conduct unbecoming employees resulting in disruption in the workplace on April 3, 1990.

JOINT STATEMENT OF ISSUE:

On April 3, 1990, while attending a staff meeting called by the Company to discuss work-related problems, a verbal exchange took place between Messrs. Kelley and Francois.

Investigations into the incident of April 3, 1990, were held and employees P. Francois and E. Kelley were each assessed 5 demerit marks.

The Union appealed the assessment inasmuch as the employees had received 15 demerit marks for unbecoming conduct on April 2, 1990, and stated that the incident of April 3, 1990 must be viewed as a continuation of the April 2, 1990 incident.
The Company declined the grievance.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) D. DEVEAU	(SGD.) J. L. LANGLAIS
SYSTEM GENERAL CHAIRMAN	for:DIRECTOR OF MATERIALS

There appeared on behalf of the Company:

H. C. Wendlandt	- General Solicitor, Montreal
R. Smith	- Solicitor, Montreal
D. David	- Labour Relations Officer, Montreal
J. P. Deighan	- Assistant Director of Materials, Stores Operations, Montreal
B. Benner	- Assistant Manager of Materials, Ogden Stores

And on behalf of the Union:

G. Marceau	- Counsel, Montreal
D. Deveau	- System General Chairman, Calgary

C. Pinard - Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

Upon a review of the material the Arbitrator is satisfied that both employees were responsible for engaging in an exchange of insults, on two separate occasions in the workplace on April 3, 1990. The second incident would, to all appearances, have resulted in a physical altercation but for the intervention of a third party. While it is true that the exchanges between Mr. Kelley and Mr. Fran‡ois were triggered during the course of a meeting conducted by the Company respecting an altercation between them on the day before, the Arbitrator cannot accept the submission of Counsel for the Union that the responsibility for the incident must therefore be placed at the feet of the employer. It appears that the Company's manager, Mr. B. Benner, was attempting to conduct a meeting of the employees which would clear the air and pacify the antagonism which flared between Mr. Kelley and Mr. Fran‡ois during the course of an incident of the previous working day. As a general rule the Company is entitled to expect that employees participating in a meeting specifically called to quiet their personal animosities will maintain a degree of civility and respect during the employer's attempt to restore a degree of harmony between them. In the Arbitrator's view the Company's positive intention in that regard should not be turned against it in these proceedings because of the antagonists' inability to control themselves.

In the result the Arbitrator is satisfied that the assessment of discipline was for just cause and the five demerit marks awarded against Employees Fran‡ois and Kelley were well within the range of appropriate disciplinary response. The grievances are therefore dismissed.

September 13, 1991 (Sgd.) MICHEL G. PICHER
ARBITRATOR