CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 390

Heard at Montreal, Tuesday, November 14th, 1972

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED

and

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

DISPUTE:

The Brotherhood claims that the Company violated Article 8, of the Agreement, when employee H. Chartrand, Sudbury, Ontario, was suspended from the service without pay from August 9th, 1971, to September 21st, 1971, inclusive, and twenty demerits placed against his record.

JOINT STATEMENT OF ISSUE:

Employee Chartrand was scheduled to take three days' annual vacation in November 1971. June 29th 1971, he requested that he be allowed to take the three days, August 3rd, 4th, and 5th, 1971, also that he be given one day's leave of absence (August 6th, 1971) account his impending wedding, July 31st, 1971.

He was not given a definite answer and on July 30th, 1971, put his request in writing. He was advised that his request was declined and was instructed to report for duty on his regular shift August 3rd, 1971. Chartrand absented himself from duty for the entire four days requested and on return August 9th, 1971, was suspended.

The suspension was lifted September 22nd, 1971, and employee Chartrand was returned to service without pay for time lost due to suspension and twenty demerits were placed against his record.

The Brotherhood claimed that the discipline by suspension imposed was improper and requested that the employee be paid back wages for time held out of service and that the twenty demerit marks be removed from his record.

This claim was denied by the Company.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) L. M. PETERSON	(SGD.) F. E. ADLAM
GENERAL CHAIRMAN	DIRECTOR, LABOUR RELATIONS AND PERSONNEL

There appeared on behalf of the Company.

F. E. Adlam	– Director, Labour Relations & Personnel, Toronto
J. J. Cowan	– Director of Personnel, Toronto
W. E. Massender	– Regional Manager, Preston

And on behalf of the Brotherhood:

L. M. Peterson	– General Chairman, Toronto
G. Moore	– Vice-General Chairman, Toronto
F. C. Sowery	– Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

Although the material presented at the hearing indicated some conflict as to the facts, the case may be dealt with on the facts set out in the Joint Statement of Issue and on those others which are not in dispute.

There is no doubt that when the grievor left work on July 30, 1971 he knew that he had not been given the vacation leave and the leave of absence he had requested. It is understandable that since he had advised the Company of his plan to be married on July 31 he would attach great importance to a vacation and leave of absence at that time, but there is nothing to suggest that the Company was unsympathetic to his request, or that it acted unfairly or unreasonably in denying it. The grievor was quite deliberately absent without leave, and was therefore subject to discipline, although it may be that the severity of the discipline might be somewhat modified in the circumstances. Ultimately, he was assessed twenty demerit marks for this offence, and I am unable to say that this measure of discipline went beyond what was reasonable.

The substantial problem in the case is that the grievor was held out of service from August 9, 1971, when he returned from his unauthorized absence, until September 21, 1971, after which date he was returned to duty. It was on August 9 that the grievor was advised he had been assessed twenty demerit marks. (Subsequently, he was advised of the assessment of further demerits on respect of his continuing absence after August 3, but this advice was disclaimed by the Company, and must be regarded as of no effect). The grievor had a record of 45 demerit marks, but would have been eligible for removal of ten of these on August 3, since he had a six-month accident-free record. At the time of the assessment on August 9, however, it was considered that the grievor had accumulated 65 demerits and that he was subject to dismissal. He was therefore advised that he was held out of service pending approval by higher authority of his dismissal.

This seems, in the circumstances, to have been a proper course. Since the grievor was absent without leave at the time he would otherwise have been eligible for removal of ten demerits, he cannot be heard to complain that this had not been done by August 9. Although, at the latter date, he had accumulated 65 demerits and may be said to have been subject to dismissal, the Company was not obliged to dismiss him, and it quite properly decided to remove the ten demerits, and treat the grievor as having 55 demerits. This was done. The only question, in my view, is whether it was done with reasonable promptness. In fact, the grievor was held out of service for some six weeks while his case was considered. This amounts to a very lengthy period of suspension in addition to the twenty demerits assessed.

The Union contended that the Company had failed to investigate the matter properly. The Collective Agreement provides, in Article 8(b) that where an employee has been disciplined, dismissed, or feels that he has been unfairly dealt with, he may appeal, within three days, for an investigation. Although the Union concerned itself with the grievor's case, there does not, from the material before me, appear to have been any invocation of this provision. If it had been involved then, by Article 8(d), an investigation would have to have been held within three days. There is, however, no time limit for the rendering of a decision, although it is noteworthy that in the case of an employee dismissed for cause, where an employee is detained more than five day awaiting a certificate of discharge requested pursuant to Article 8(e), he is to be paid scheduled wages for the period in excess of five days.

lt is my view that the Collective Agreement contemplates that decisions as to an employee's continued employment will be made with reasonable promptness. In any event, where no precise time limit is prescribed, a reasonable time is to be presumed. In the instant case, the Company relies in general on a system of demerit marks for discipline purposes. As I have indicated, where an employee has exceeded the maximum allowed demerits the Company is justified in holding him out of service pending its decislon as to his continued employment. Here, the Company decided to consider the grievor as only having thirty-five demerits at the time the additional twenty was imposed, so that he remained within the demerit system. Delay in coming to this conclusion imposed an additional punishment on the grievor, one going beyond what even an employee discharged for cause might expect.

In all of the circumstances described, it is my view that the grievor was properly assessed twenty demerits, and that he was properly held out of service for a time while his case was considered, but that it was improper for the Company to have held him out of service for a period longer than three weeks. Having regard only to the circumstances of this case, it is my view that continued delay was unreasonable. It is therefore my award that the grievor be reimbursed for his loss of regular earnings (that is, exclusive of overtime) for the period following August 30, 1971 until the date of his return to work.

(signed) J. F. W. WEATHERILL
ARBITRATOR