CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 532

Heard at Montreal, Tuesday, January 13th, 1976

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED
(CP TRANSPORT – WESTERN DIVISION)

and

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

DISPUTE:

Whether or not employee J. Conway, Regina, Saskatchewan, was given proper notice, in writing, of the charges against him, as required in Article 17-A-1 of the Collective Agreement.

JOINT STATEMENT OF ISSUE:

On February 24th, 1975, employee J. Conway was advised as follows:

> In accordance with Article 17.1 of the Working Agreement you are being held out of service for incident February 21st, 1975.

Article 17-A-1 states:

> An employee shall not be disciplined or dismissed until after a fair and impartial investigation has been held and the employee's responsibility is established. An employee may be held out of service for such investigation for a period of not more than five working days and he will be notified in writing of the charges against him.

The Brotherhood contend the use of the word "incident" in the February 24th, 1975 notice, was not sufficient to comply with "… notified in writing of the charges against him".

The Company contend the requirements of Article 17-A-1 were met.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) L. M. PETERSON	(SGD.) C. C. BAKER
GENERAL CHAIRMAN	DIRECTOR, LABOUR RELATIONS AND PERSONNEL

There appeared on behalf of the Company:

C. C. Baker – Director, Labour Relations & Personnel, Vancouver

And on behalf of the Brotherhood:

L. M. Peterson – General Chairman, Toronto
G. Moore – Vice General Chairman, Toronto

AWARD OF THE ARBITRATOR

As well as Article 17-A-1, which is set out in the joint statement, it is also of interest to refer to Article 17-A-2, which is as follows:

> **17-A-2** When an investigation is to be held, each employee whose presence is desired will be notified of the time, place and subject matter of the investigation.

In this case the material before me shows that there was what might be called an "incident" on February 21, 1975, when Mr. Conway is said to have refused to carry out the instructions of a Supervisor. It appears that there also occurred a further "incident" when he is said to have behaved in an obstreperous and improper manner when the Terminal Operations Supervisor sought to investigate the matter. The two "incidents" were obviously related to each other and might, from the point of view of disciplinary procedure, properly be regarded as one. There is no suggestion of any other "incident" – in the sense of an event which might reasonably be thought to involve the possibility of discipline – involving the grievor that day.

The grievor was held out of service pending investigation. In such cases, as has been noted in **Cases 365** and **377**, the collective agreement requires that the employee have the benefit of a hearing and of written notice of the charges against him. In referring simply to the "incident" of February 21, the Company did not specify any particular "charge" in legal or quasi-legal jargon, as for example, that the grievor had been insubordinate. The collective agreement does not impose legal niceties on the parties in this connection, however. The clear effect of the provisions of Article 17-A is that an employee know what it is that is being investigated. From the material before me there can be no doubt that the grievor was aware of the nature of the investigation and of the charge. He was advised in the Terminal Operations Supervisor's office that he was being held out of service for investigation of his refusal to carry out the instruction given to him by the Supervisor. On the next working day he was given written notice as set out in the joint statement.

While the written notice referred only to the "incident" there is no reasonable ground to conclude that this could have referred to any other incident than the one described above. The grievor failed to attend at the investigation and apparently sought particulars of the matter. These were furnished, the Company advising the grievor that it sought to question him "to record what happened and what was said between you and Mr. Perepeluk, and subsequently between you and Messrs. Francis and Burgess". The grievor apparently understood this well enough for he did attend the investigation and answer questions on that subject.

In the particular circumstances of this case, it is my view that in referring as it did to the "incident" of February 21 the Company could only reasonably be taken to have referred to the conduct of the grievor which has been described. The grievor was evidently well aware of what was meant, but apparently sought to rely on some other possible meaning of the term "incident". That term may have different meanings in different contexts, but in the circumstances of this case it referred without doubt to the improper conduct with which the grievor was charged.

In the circumstances, it is my conclusion that there was compliance with the requirements of Article 17-A in this case.

Accordingly, the grievance is dismissed.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR