CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 783

Heard at Montreal, Wednesday, October 15, 1980

Concerning

CANADIAN PACIFIC EXPRESS LTD.

and

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

DISPUTE:

The suspension of employee Charles S. Aaron, Obico Terminal, Toronto, Ontario.

JOINT STATEMENT OF ISSUE:

Employee Charles S. Aaron was suspended from service for two months May 28th, 1980, for infraction of Rule 11 d – "failure to obey instructions of authorized personnel".

The Brotherhood contends the penalty imposed (two months) was totally unacceptable and entirely unwarranted, and demanded he be reinstated with full seniority and reimbursed all monies lost while suspended.

The Company declined the Brotherhood's claim.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) J. J. BOYCE	(SGD.) D. R. SMITH
GENERAL CHAIRMAN	DIRECTOR, INDUSTRIAL RELATIONS

There appeared on behalf of the Company:

D. R. Smith	– Director, Industrial Relations, Personnel & Administration, Toronto
B. D. Neill	– Manager, Labour Relations, Toronto

And on behalf of the Brotherhood:

J. J. Boyce	– General Chairman, Toronto
J. Crabb	– Vice General Chairman, Toronto
F. W. McNeely	– General Secretary Treasurer, Toronto
G. Moore	– Vice General Chairman, Moose Jaw

AWARD OF THE ARBITRATOR

The grievor did in fact refuse to obey his supervisor's instructions. He did so when the instructions were first given (when his conduct might better be described as a failure rather than a refusal), and later when they were repeated. He again refused – or acknowledged the fact of his refusal – when the Co-ordinator came to the work area.

There was no substantial justification for the refusal. The grievor asserted that the instructions were given in a brusque manner, and while that may be, it does not appear that they were given in such an offensive way as to justify their rejection. The grievor also referred to his own autonomy and to the efficiency of operations, which is to say that the grievor considered that he had a better idea of how the work should be done. That may or may not have been correct: it is sufficient to say that the instructions given – to move to an adjoining door and load a truck there – were quite within the authority of the supervisor to give, and it was the grievor's duty to accept them and carry them out. There was no justification for his refusal and the grievor was subject to discipline.

At the hearing of this matter the Company submitted statements from the supervisor and the Co-ordinator. These statements had not, it seems, been presented to the Union previously, although the substance of the supervisor's statement is in fact embodied in questions put to the grievor at the investigation, questions which the grievor appears to have answered frankly and honestly. In my view, the effect of Article 8.4 is that the employer, if it seeks to rely on them, is bound to present such statements to an employee before the conclusion of an investigation, so that he may know the whole case against him, and offer rebuttal thereto. Accordingly, the statements of the supervisor and coordinator must be held to be inadmissible. In the circumstances of this particular case, however, that ruling has no practical effect on the outcome, the material facts not being in any real contention.

The grievor was, I have found, subject to discipline for his improper refusal to follow instructions. The real issue is as to the severity of the penalty imposed. In **Case No. 749** it was held that while the Company had a general power to impose suspensions, and while suspension could be resorted to as a disciplinary measure in "extreme cases", the Company should be held to the application of its policy of applying a system of merit and demerit points, subject to its right to change that policy. Now while refusal to follow instructions is obviously a very serious matter, there was not, I think, proper occasion for the Company to consider this case an "extreme" one in the sense that only a prolonged absence from work and a very substantial loss of earnings could bring home to the grievor the necessity of following instructions. While it would have been proper to suspend the grievor immediately for the balance of his shift, the important disciplinary measure would have been the assessment of demerit points. Repetition of the offence, if the employee were obstinate in his refusal, would lead to further demerits, and it would be quite clear that the employee's job was in jeopardy Both the employer and the Union would have ample opportunity to make him see reason. If refusal continued, discharge of the employee would be justified. To impose a lengthy suspension in such circumstances serves no very clear purpose, and may simply prolong a period of uncertainty.

Having regard to all of the circumstances, it is my view that the assessment of twenty-five demerits would not have gone beyond the range of reasonable disciplinary responses to the situation, and would have been a just penalty. It is my award that the suspension of the grievor be set aside, that a penalty of twenty-five demerits be substituted therefor, and that the grievor be compensated for loss of earnings.

(signed) J. F. W. WEATHERILL
ARBITRATOR