CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1072

Heard at Montreal, Wednesday, April 13th, 1983

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

DISPUTE:

Discipline imposed on T. Sullivan, Obico Terminal, Toronto, Ontario, for (alleged) repeated failure to report for duty on October 25, 26 and 27, 1982.

JOINT STATEMENT OF ISSUE:

The Union contends that the discipline is unjust and contrary to article 8.7 of the collective agreement. The discipline is also excessive and contrary to the law (see Section 184 of the Canada Labour Code and the Constitution Act, 1982, Section 2) and are a continuation of the charges in which he was assessed twenty demerits for not reporting for work October 1st and 4th, 1982.

The Company contends that the discipline was duly imposed and appropriate in the circumstances and that the grievance should be dismissed.

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

There appeared on behalf of the Company:

D. W. Flicker	– Counsel, CP. Ltd., Montreal
D. R. Smith	– Director, Industrial Relations, Personnel and Administration, Toronto
B. D. Neill	– Manager, Labour Relations, Toronto
E. F. Schwarz	– Regional Manager, Toronto
K. Rankin	– Manager, P&D, Toronto
J. W. McColgan	– Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

D. Watson	– Counsel, Toronto
J. J. Boyce	– General Chairman, Toronto
J. Crabb	– General Secretary-Treasurer, Toronto
T. Sullivan	– Grievor

AWARD OF THE ARBITRATOR

The facts of this case are in most respects identical to those of **Case No. 1070**. The case is different in this respect, that the grievor, at the time of the events in question here, had been advised of the assessment of discipline for his previous failures to report to work as scheduled.

The grievor did not heed that discipline, and persisted in his refusal to work, being loyal to certain of his own principles, and disregarding his obligations to his employer. While the arguments made in **Case No. 1070** were also made in this (and what was said with respect to them applies equally in the instant case), reference is also made to the alleged violation of article 8.7. That article, which is part of the provisions of the collective agreement dealing with investigations and discipline, permits employees to appeal from the imposition of discipline. The imposition of discipline itself could not be a "violation" of that article.

While, as in **Case No. 1070**, there was just cause for the imposition of discipline in this case, I do not consider that the imposition of 40 demerits was justified. It is not a necessary aspect of the Company's system of discipline that the penalty imposed in one instance be doubled upon the recurrence of the offence. Demerit points accumulate, and the "progressive" effect of discipline is achieved in that way. (This is not to say that there may not be some cases in which the assessment of a greater number of demerits than that first imposed would be appropriate in certain cases of repeated offences).

In my view, having regard to all of the circumstances, the assessment of 40 demerits was excessive. The assessment of 20 demerit would not have gone beyond the range of reasonable disciplinary responses to the situation. It is accordingly my award that the demerits assessed the grievor in this case be reduced to 20. The effect of this is that the grievor's discipline record stands at 30 demerits (10 merit points; 20 demerits per Case No. 1070, and 20 demerits per the instant case).

(signed) J. F. W. WEATHERILL
ARBITRATOR