CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1077

Heard at Montreal, Tuesday, May 10, 1983

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

EX PARTE

DISPUTE:

BROTHERHOOD:

The dismissal of CanPar Driver Service Representative Mr. Daniel Moore, Montreal, Quebec.

COMPANY:

The termination of CANPAR Driver Service Representative Mr. D. Moore, Montreal, Quebec.

STATEMENT OF ISSUE:

BROTHERHOOD:

Driver Service Representative Daniel Moore was dismissed on November 2, 1981. The Union contends this dismissal was not warranted as there was no cause shown for his dismissal.

The Company agreed to reinstate Daniel Moore to service on April 5, 1982. They later advise us by letter dated July 9, 1982, the employee was not interested in returning to CANPAR.

By letter dated July 29, 1982, the Company was advised, they had contacted the wrong Mr. Moore and the conditions as outlined in our letter of April 21, 1982 are still applicable, which was we are agreeable he be returned to service, and further request he be reimbursed all monies lost.

The Company on November 12, 1982, refused to reinstate and reimburse employee Daniel Moore.

COMPANY:

Probationary employee D. Moore was terminated on November 2, 1981. The Union contends this dismissal was not warranted as there was no cause shown for his dismissal.

The Company, on November 12, 1982, refused to reinstate and reimburse employee D. Moore.

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. R. Smith – Director, Industrial Relations, Personnel & Administration, Toronto

N. W. Fosbery – Director Labour Relations, Toronto
M. M. Yorston – Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:
J. J. Boyce – General Chairman, System Board of Adjustment No. 5, Toronto
J. Crabb – Vice-General Chairman, Toronto
M. Gauthier – Vice-General Chairman, Toronto

AWARD OF THE ARBITRATOR

The grievor was hired by the Company on September 4, 1981, He was discharged on November 2, 1981, during his probationary period.

In the course of the grievance procedure the Company did agree to reinstate one "D. Moore". That agreement was made in the case of Donald Moore, a casual employee who had been discharged for inadequate attendance. It was demonstrated that Donald Moore's attendance had not been inadequate, and the Company agreed to reinstate him. Donald Moore, however, did not then wish to return to the Company' employ.

The agreement to reinstate Donald Moore was not an agreement to reinstate Daniel Moore, the grievor in this case. This is so even although the Company may, in error, have referred to Donald Moore as "Daniel Moore". Each case was considered on its own merits and there was in fact no agreement to reinstate Daniel Moore, the grievor in this case.

Article 4.2.1 of the collective agreement is as follows:

> **4.2.1** A new employee shall NOT be regarded as permanently employed until completion of 65 working days cumulative service. In the meantime, unless removed for cause which in the opinion of the Company renders him undesirable for its service, the employee shall accumulate seniority from the date first employed on a position covered by this Agreement.
>
> An employee with more than 65 working days cumulative service shall not be discharged without being given a proper investigation as provided in article 6 of this Agreement.

The grievor was not "permanently employed" within the meaning of this provision. The issue then, is whether or not he was discharged "for cause which in the opinion of the Company renders him undesirable for its service". The cause which the material before me establishes is that the grievor, a Driver/Representative, did not make an average number of stops per hour which the Company considered reasonable. The grievor's rating in this respect showed marked improvement on the days when his Supervisor rode with him, but fell off immediately thereafter, and never, despite warnings that it must improve attained the level which, on the material before me, the Company could reasonably expect.

On the material before me, the Company formed its opinion on a proper basis and did not exercise its discretion in an arbitrary or discriminatory manner. The discharge of the grievor was not in violation of the collective agreement, and the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR