# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 1136

Heard at Toronto, Monday, December 12, 1983

Concerning

## CANADIAN PACIFIC EXPRESS LIMITED
## (CANADIAN PARCEL DELIVERY)

and

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

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### DISPUTE:

Appeal of discipline assessed employee P. Hesse, Kitchener, Ontario, dated November 29, 1982.

### BROTHERHOOD STATEMENT OF ISSUE:

On November 2, 1982, employee P. Hesse was involved in a traffic accident. The Accident Committee convened on November 5, 1982 and employee P. Hesse was disciplined by document in writing, dated November 29, 1982. On or about November 16, 1982, the Company requested an extension of the time limits under the Collective Agreement. The parties agreed to extend the time limits through to November 23, 1982. Employee, P. Hesse, as a result of the accident was assessed fifteen demerit marks for:

"Intersection accident on November 2, 1982".

The Union appealed the assessment of the fifteen demerit marks on the grounds that employee P. Hesse had been dealt with unjustly and the discipline was null and void inasmuch as it was issued subsequent to the expiry of the time limits as extended and as provided for under Article 6.06 of the Collective Agreement. In addition, the discipline was excessive.

The Company declined the appeal.

### FOR THE BROTHERHOOD:

**(SGD.) J. J. BOYCE**
**SYSTEM GENERAL CHAIRMAN**

There appeared on behalf of the Company:

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| D. W. Flicker | – Counsel, CP Ltd., Montreal |
| D. R. Smith | – Director, Industrial Relations, Personnel and Administration, CP Express, Toronto |
| B. D. Neill | – Manager, Labour Relations, CP Express, Toronto |
| A. D. Salis | – Area Manager, Ontario, CP Express, Toronto |
| J. N. Bennett | – District Manager, Southwestern Ontario, CP Express, London |

And on behalf of the Brotherhood:

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| D. Watson | – Counsel, Toronto |

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| J. J. Boyce | – General Chairman, Toronto |
| J. Crabb | – General Secretary-Treasurer, Toronto |
| M. Gauthier | – Vice-General Chairman, Toronto |
| J. Bechtel | – Local Chairman, Cambridge |
| P. Hesse | – Grievor |

## AWARD OF THE ARBITRATOR

The discipline in this matter appears to have been imposed after the expiry of the period set out in Article 6.6 of the Collective Agreement. The Company asserts that the period of time was extended by mutual agreement. It is acknowledged that there was an agreement as to extension of time, but it is not acknowledged that the extension was of sufficient length to make the imposition of discipline in this case timely. The onus is on the party alleging the extension to establish that it was given, and on the conflicting evidence in this case – due, I believe, to a misunderstanding on the part of those concerned, and not due to an attempt to mislead – I am unable to conclude that the extension was given. The discipline was not imposed within the period provided for by the Collective Agreement, and thus was invalid.

Accordingly, the grievance is allowed. It is my award that the demerits assessed against the grievor be removed from his record.

I make no award of reinstatement or compensation. The grievor was discharged for having accumulated sixty demerits. Even with the removal of the demerits involved in the instant case, the grievor's record stood at seventy demerits, and he was, under the system of discipline in effect, subject to discharge.

In this respect, I was referred to the recent decision in the **British Columbia Railway case**, 8 L.A.C. (3d) 233 (Hope). While I have, with respect, reservations as to some of the commmets made in that case with respect to the Brown system of discipline, I do agree – and this view has been set out in a number of cases in the Canadian Railway Office of Arbitration – that in every discharge and discipline case the issue is whether or not there was just cause for the action taken by the Company. The application by the employer of an "automatic" rule – that is to say, the application of its discipline policy – is not binding on the Arbitrator. I also agree with what is set out in that case, that "the long existence of the system, the knowledge of employees of its application and its apparent long acceptance by the union are factors to be weighed in a review of discipline or dismissal."

It was concluded in **CR0A 1135** that the discipline involved there was imposed for just cause. The effect of that was that the grievor's record was then in excess of sixty demerits. Having regard to that record, and to the offence involved in that case, it was concluded that there was just cause for the Company's action. As a result of that the matter of the relief to be granted to the grievor in the instant case is academic, although the grievance succeeds to the extent that the demerits involved in the instant case are removed.

It should only be added that the union's allegations of improper discrimination and harrassment, made in respect of this and the preceding cases (**CROA 1131 – 1136**), have not been made out. There was certainly bad feeling as between the grievor and his supervisor, and as well as between the grievor and some of his fellow employees, but there is no doubt that just cause for discipline existed, and that in the result the grievor's discharge was not improper.

**(signed) J. F. W. WEATHERILL**
**ARBITRATOR**