CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 162

Heard at Montreal, Tuesday, July 8th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Discipline assessed Mr K. Saley, Engine Watchman, Sarcee, Alberta, for insubordinate conduct towards a supervisory officer on October 3, 1968.

JOINT STATEMENT OF ISSUE:

While on duty as an Engine Watchman, Mr. Saley had an argument with his supervisor. He was relieved of his duties and sent home for insubordination. The incident was investigated on October 7 and Mr. Salee's record was assessed with thirty demerit marks and time out of service to count as suspension for insubordinate conduct towards a supervisory officer.

The Brotherhood claims that Mr. Saley was improperly disciplined and requests that the demerit marks be deleted from his record and that he be paid for the three days' pay he was held out of scrvice pending investigation.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) J. A. PELLETIER EXECUTIVE VICE PRESIDENT	(Sgd.) K. L. CRUMP ASSISTANT VICE PRESIDENT - LABOUR RELATIONS

There appeared on behalf of the Company:

D. O. McGrath	Labour Relations Assistant, C. N. R. Montreal
B. Noble	Senior Agreements Analyst, C.N.R. Montreal
L. G. Barlow	Equipment Foreman, C.N.R. Calgary

And on behalf of the Brotherhood:

J. A. Pelletier	Executive Vice President, C.B.ofR.T.&G.W. Montreal
R. Henham	Regional Vice President, C.B.ofR.T.&G.W. Vancouver
K. Saley	Grievor -- Calgary

F. C. Johnston Regional Vice President, C.B.ofR.T.&G.W.
Toronto

AWARD OF THE ARBITRATOR

The grievor is an employee of approximately 29 years' seniority, with a good record. On the morning of October 3, 1968, ho was asked by his Supervisor, Equipment Foreman L. G. Barlow to assist in fueling a locomotive. As the two men were going to do this, the grievor questioned Mr. Barlow as to the way in which certain work had been allocated a day or two previously. The grievor was a member of the grievance committee and there was nothing improper in his raising this matter with Mr. Barlow, whether on an informal and casual basis, or as the oral presentation of a grievance. It is alleged, however, tha the grievor raised his question in a "profane and insolent" manner. While there is a conflict as to the precisc language used, it is clear from the grievor's own statement that his language, while perhaps not particularly shocking in itself, was not appropriate for dealings of this nature, and there was nothing in the circumstances thcn obtaining which would provoke it.

In my view, the grievor's conduct on this occasion could properly have been the subject of some discipline, even though the incident seems to have been a relatively minor one. Mr. Barlow immediately asked the grievor to come to his office, and the grievor complied. Mr. Barlow contacted his own superior officer and the Local Chairman of the Union, and requested them to come to the office. While awaiting their arrival, he asked the grievor if he wished to proceed with the fueling of the locomotive. The grievor complied and the work was done. When it was completed, the grievor went to the cab of the locomotive to pick up the water can. It was Mr. Barlow's report that he asked the grievor for the fuel ticket, but it was the grievor's evidence that Mr. Barlow did not ask but merely reached (or in the grievor's terms, "lunged") for the ticket which was in his shirt pocket. What really happened is of course difficult to discern, but it seems fair to say that Mr. Barlow grabbed once or twice for the fuel ticket and in the process tore the grievor shirt pocket. It is said that the grievor threatened to knock Mr Barlow out of the engine, but the threat was not carried out and does not seem to have been seriously meant. Little is to be gained by dwelling on the details of this silly incident. It may be added that the question of the proper procedure for handling fuel tickets is irrelevant to this case: whatever the usual procedure, Mr. Barlow's request to examine the ticket ought to have been complied with, as it ultimately was.

Having regard to all of the circumstances of the second incidene I am unable to see in it sufficient cause for the imposition of discipline on the grievor. Whatever improper remarks his excitement may have led him to on that occasion were provoked, in my view, by the conduct of the supervisor.

Considering only the first incident of the day, it is my view that there was not sufficient cause for the penalty actually imposed, which went beyond the range of reasonable disciplinary responses to the situation. Insubordination may of course be a very serious

offence, but the nature of the offence depends in every case on the circumstances. In the instant case, there is not to be found that deliberate undermining of managerial authority which characterizes a serious case of insubordination. In the circumstances of this case, a reprimand in the form of five demerit marks would have been a proper penalty, and it is my view that in these circumstances the grievor should be reimbursed for his three days' lost wages.

It is accordingly my award that the penalty assessed against the grievor be reduced to five demerit marks, and that he be reimbursed for his three days' lost wages.

J. F. W. WEATHERILL
ARBITRATOR