CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 283

Heard at Montreal, Tuesday, May 11th, 1971

Concerning

CANADIAN NATlONAL RAlLWAY COMPANY

and

BROTHERHOOD OF RAlLWAY, AIRLlNE AND STEAMSHIP CLERKS, FRElGHT HANDLERS,
EXPRESS AND STATlON EMPLOYEES

DISPUTE:

The Brotherhood claims that Mr. Robert H. Fogwill, Express Value Clerk, St. John's, was the recipient of an unjust penalty when he was assessed three month's suspension subsequent to a charge of "Investigation in connection with failure to conform with procedure resulting in careless checking and handling of large value shipment and shortage of $1,000.00".

JOINT STATEMENT OF ISSUE:

On October 30, 1970, at approximately 10:50 a.m. Mr. Fogwill assisted by General Clerk J. Bell commenced to unload and count money shipment from container to value room. At approximately 11:20 a.m. General Clerk J.Bell left for another call. The unloading was completed at approximately 12:10 p.m. On the first count of the money shipment, Mr. Fogwill had doubts about his count. He rechecked and felt his count was complete. The money shipments were subsequently transferred to Company truck without receipt and upon delivery the consignee, one bag of quarters was found to be missing.

On November 20, 1970, Mr. Fogwill was assessed three month's suspension. The Brotherhood appealed the suspension claiming it unjust and requested Mr. Fogwill's reinstatement with all loss of wages. The Company denied the Brotherhood's request.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) E. E. THOMS	(SGD.) K. L. CRUMP ASSISTANT VICE-PRESlDENT - LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid	System Labour Relations Officer, C.N.R., Montreal
L. V. Collard	" " "
G. James	Labour Relations Assistant, C.N.R.,Moncton
H. Peet	Employee Relations Supervisor, C.N.R.,

		St.John's, Nfld
J.	Nicholson	Superintendent Express, C.N.R., St. John's Nfld.

And on behalf of the Brotherhood.

E. E. Thoms	General Chairman, B.R.A.C., Freshwater, P.B., Nfld.
M. J. Walsh	Local Chairman, B.R.A.C., St. John's, Nfld.
G. D. Noseworthy	Local Chairman, B.R.A.C., Argentia, Nfld.

AWARD OF THE ARBITRATOR

There is no substantial dispute as to the facts. That the grievor was negligent in his handling of the shipment is admitted, and is clear from the facts. He was negligent in a number of respects in connection with the shipment in question. He did not check and record the seals on the packers in whicn the shipment was delivered; he did not request a replacement when Mr. Bell left him, but continued, contrary to the regulations, to handle the shipment by himself; he failed to report the discrepancy he suspected, but carried out a subsequent count by himself, subsequently, on his lunch period, he left the key to the value room in an unlocked desk drawer; later, when delivery of the shipment was to be made, he began to transfer the value shipment even though the Motorman, who was to receive it, was not present (see Case No. 282); he did not perform the transfer properly, and did not secure a proper receipt for it.

This is not simply the case of a mistake. It is a case of thoroughly negligent handling of a value shipment, contrary to regulations of which the grievor, as an experienced employee, was certainly aware, and contrary to the sensible principles on which those regulations were based. The whole conduct of the operation reveals an extremely serious failure of responsibility, contrary to the whole purpose of the grievor's job. In the circumstances of this case, the company was justified in taking a very serious view of the matter. Certainly a three month suspension is a most severe penalty, and one to be reserved for extreme cases. The question is not whether penalty is one which the arbitrator would have imposed, but whether it is one which the employer had just cause to impose, that is, whether it falls within the range of reasonable disciplinary responses to the situation. In the particular circumstances of this case, I am not able to say that there did not exist just cause for the penalty imposed.

At the hearing of this matter, the union presented a decision of a Board of Referees of the Unemployment Insurance Commission in a claim made by the grievor. The Board found that the grievor "did not lose his employment ... by reason of his own misconduct". This finding was made in proceedings quite different from this, and to which the company was not a party. It is obviously not bound by the decision, and it would not be proper to admit such decision in evidence in these proceedings.

For the reasons set out above, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR