

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.315

Heard at Montreal, Tuesday, November 9th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The Union claims Sectionman D.F. Correia of Tcronto, Ontario was disciplined without cause and, as provided for in Section 5, Rule 4 of Wage Agreement No. 14, should be reinstated and paid at schedule wages for each day lost and also reimbursed for any reasonable expenses incurred as a result of such discipline. Section 5, Rule 4 reads as follows:

"An employee who has been suspended, disciplined or dismissed and who is subsequently found blameless shall be reinstated and paid at schedule wages for each day lost, and also reimbursed for any reasonable expenses incurred if required to be away from home in connection with the investigation."

JOINT STATEMENT OF ISSUE:

A section gang of which the grievor was a member, was working at Malport on the Toronto Area on December 2, 1970 unloading ballast. Inasmuch as the Company estimated that the work could not be finished during regular work hours, the men were advised that they would be required to work some overtime to complete the Job. The grievor informed the Supervisor that he did not want to work overtime and ceased working. Altercation ensued between the grievor and his supervisor. After investigation, the grievor was suspended for 90 days.

FOR THE EMPLOYEES:

(SGD.) P. A. LEGROS  
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) K. L. CRUMP  
ASSISTANT VICE-PRESIDENT  
LABOUR RELATIONS

There appeared on behalf of the Company.

W. H. Barton	System Labour Relations Officer, C.N.R., Montreal
D. Protomanni	Section Foreman, C.N.R., Toronto
T. E. Buchnea	Roadmaster, C.N.R., Toronto

W. J. Long

Labour Relations Assistant, C.N.R., Toronto

And on behalf of the Brotherhood:

P. A. Legros	System Federation Gen. Chairman, BMW, Ottawa
W. M. Thompson	Vice President, B.M.W.E., Ottawa
W. H. Montgomery	General Chairman, B.M.W.E., Belleville
L. A. Boland	General Chairman, B.M.W.E., London

#### AWARD OF THB ARBITRATOR

The grievor was suspended for insubordination. He was at work with a crew unloading ballast on December 2, 1970. The crew arrived at the work site by bus at 0830 hours, and the grievor worked that morning apparently without incident. At noon the foreman advised crew members that a train was arriving at 1400 hours which must be unloaded, so that it would be necessary to work some overtime. It seems the grievor objected to working overtime then, but did not state any reason. Subsequently, however, when overtime work was about to begin the grievor again objected, and left work and went to the bus. While on his way to the bus he approached the assistant supervisor and asked to be taken home. He was told that was not possible. It seems the grievor then went and rested in the bus, and on two occasions, sounded the horn. Shortly after this, he again spoke to the assistant superintendent, and told him he was sick. He was then told to wait in the bus, which he did. It seems he eventually went home with the rest of the crew.

It was the assistant superintendent's statement that when the grievor came to him after being in the bus, he placed his hand on his shoulder and squeezed, and made some threatening remarks to him. The grievor denies having done this.

At his investigation the grievor did submit a doctor's certificate to the effect that he had been "ill and unable to work" from and after November 28, 1970. He had not, it seems, been at work on the two days preceding the incident. The grievor's statement that he was sick on the day in question has not been disputed. He was sent for examination to the company's doctor who reported that he was "responsible for his action", but that does not seem to be in dispute, and does not relate to the question of his physical condition on the day in question.

Being sick, the grievor could not properly be required to work overtime. When the assistant superintendent was told the grievor was sick, he quite properly told him to wait in the bus (there is no suggestion that anything in the nature of an emergency was involved). It is not clear that the grievor advised his foreman that he was sick, but he seems simply to have walked away from his work. Being sick, he was not required to work overtime, as I have said, but he ought to have properly advised his foreman as to his condition. Further, his sounding of the bus horn, which he admitted to doing, seems to have been a rather foolish gesture of impatience. Finally,

the material before me at least suggests the conclusion that the grievor behaved in a somewhat abusive fashion towards the assistant superintendent. As the squeezing of the shoulder and the threats, there is an outright conflict which cannot be resolved on the material before me. What is established then, is an incident of surly and thoughtless behaviour on the part of the grievor. It cannot be said, however, that it is a case of assault on a supervisor or of an incident of the type that would justify a very heavy penalty.

In my view, the grievor was subject to some minor discipline in respect of his behaviour. The serious case alleged against him has not been made out. Thus, while the penalty imposed was not justified, the grievor has not been found "blameless" and is not entitled to the full compensation referred to in section 5, rule 4.

The grievor, it was acknowledged; has a bad record, and this may be taken into account in assessing the discipline which could properly have been imposed. In matters of industrial discipline, it is the record of such discipline which is relevant and not the other records of undesirable behaviour which a man may accumulate. The only actual incident of discipline referred to by the company was the grievor's demotion, in 1969, for "misappropriation of company property". Other wrongdoings relating to his employment were referred to, but these do not appear to have been the subject of disciplinary action, and ought not, therefore, to be considered at this time. The same is true of the grievor's criminal record, and of incidents from his private life.

Having regard to all of the circumstances as they appear from the material before me, it is my conclusion that a ninety-day suspension was markedly excessive. A suspension for a period of ten days would not, however, have gone beyond the range of reasonable disciplinary responses to the situation, and the grievor is not entitled to recover for his loss of employment in excess of eighty days at schedule wages.

In accordance with the foregoing, it is my award that the penalty imposed on the grievor be reduced to one of ten days, and that he be compensated accordingly.

J. F. W. WEATHERILL  
ARBITRATOR