CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 325

Heard at Montreal, Tuesday, December 14, 1971

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim for removal of discipline assessed with compensation for time lost by G. Lapierre.

JOINT STATEMENT OF ISSUE:

On July 10 and 11, 1971, relieving section foreman G. Lapierre without proper authorization, made use of a motor car on the Wacouna and Menihek Subdivisions of the Q.S.N. & L. Railway between Gilling and Sept-Iles Que. in violation of the Uniform Code of Operating Rules, Book "D", and of the Rules Governing the Use, Operation and Movement of Motor, Hand, Velocipedes and Push Cars more specifically rules 300, 370, 371 and 375 . Following an investigation held on July 19, 1971, his services were terminated with the Railway. The Brotherhood appealed the discipline assessed. The Railway has refused to remove the discipline.

| FOR THE EMPLOYEES: | FOR THE COMPANY: |
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| (SGD.) P. A. LEGROS<br>SYSTEM FEDERATION<br>GENERAL CHAIRMAN | (SGD.) P. L. MORIN<br>SUPERINTENDENT, LABOUR<br>RELATIONS |

There appeared on behalf of the Company:

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| J. | Bazin | Counsel |
| P. | Morin | Superintendent Labour Relations, QNS&L Rly., Sept-Iles, Que. |
| T. | Leger | Labour Relations Asst. QNS&L Rly., Sept-Iles |
| F. | Leblanc | Labour Relations Asst. QNS&L Rly., Sept-Iles |
| L. | Keane | Trainmaster, QNS&L Rly., Sept-Iles |
| R. | Morris | Trainmaster, QNS&L Rly., Sept-Iles |
| C. | Doiron | Program Maintenance Supervisor, QNS&L Rly., Sept-Iles, Que. |
| G. | Howlett | Acting Roadmaster, QNS&L Rly., Sept-Iles |
| J. A. | Callaghan | Work Equipment Supervisor, QNS&L Rly, Sept-Iles |
| C. A. | Bonenfant | Roadmaster, QNS&L Rly., Sept-Iles |
| K. | Rockwell | Assistant Supervisor, QNS&L Rly., Sept-Iles |

And on behalf of the Brotherhood:

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| P. A. Legros | System Federation General Chairman, B.M.W.E., Ottawa |
| W. M. Thompson | Vice President, B.M.W.E., Ottawa |
| G. Masse | General Chairman, B.M.W.E., Montreal |
| J. P. Beaulieu | Secretary Treasurer, Local 96, B.M.W.E., Sept-Iles |

AWARD OF THE ARBITRATOR

At the hearing of this matter, the direct evidence of a number of witnesses establlshed the following facts: On FrIday, July 9, 1971, it became known that the passenger train, usually operated on Fridays to take men working on the line to Sept-Iles, would not operate. When this was announced to his group of men, the grievor stated that he would "crank up the men" so they would not work on the weekend. That evening, at Gilling, where he stayed, the grievor came to the assistant supervisor timber and surfacing and stated that his men (over whom the grievor had no proper authority) would not be going to work the next day. The next day, indeed, the timber and surfacing crew was unwilling to work, although finally persuaded to do so. That evening, at about 8.30 p.m., it was noticed that the motor car, assigned to the section camp, was missing. It was a car for which the grievor was responsible. No permit had been given for the movement of a Motorcar, and enquiries were made at several points. It was determined that the car, with a group of employees, had been taken South, in the direction of Sept-Iles. Ultimately, a group of two Motorcars, one moving without lights, was flagged down at Ross Bay Junction, some one hundred and twenty miles South of Gilling. The grievor was on the lead car, and appeared to act more or less as a spokesman for the group. The group delayed at Ross Bay Junction for a while and then proceeded, as they announceo, towards Sept-Iles. Shortly before this the roadmaster had advised the grlevor that he was suspended, and that he and the others should remain at Ross Bay Junctlon, where accommodation was avallable.

The grievor, desplte hls responsible position as section foreman, obviously misconducted himself in a most serlous way. He incited employees to what would have been an illegal strike, he took the Motorcar without authorization, he moved it on the track without obtaining the permit which he well knew was required, and he paid no heed whatever to the proper instructions of his superiors. In the movement of the Motorcar down the track he subjected himself and his companions, as well as others to grave rlsks, as there was other traffic on the track. This sort of unauthorized Joy-ride, as it was properly described by Counsel, was obviously an offence of the most serious sort, and merited the most severe discipline.

The Union took the position that much of the evidence before me had not been referred to at the investigation. The investigation, however is for the purpose of giving the employee an opportunlty to be heard before the Company makes up its mind as to whether or not to

Impose discipline. The Company, which must show at arbitration that it had proper cause to do what it did, is not limited in its proof to matters raised at the grievor's investigation.

The Union further argued that it was the Company's failure to provide the usual Friday passenger train which was the cause of the incident. The decision to cancel the train that day was taken in the light of an illegal strike engaged in by members of another Union. It was considered, rightly or wrongly, that there was a risk of the train being stranded, and for this reason it was cancelled. Whether this was wise or not, the decision was not in the nature of a provocation, and does not at all Justify the grievor's completely improper conduct. What he did was no mere prank, it was a flagrant violation of important rules which seriously inconvenienced a number of people and created real risks of harm for others. It is clear to me that the Company had just cause to discharge the grievor in these circumstances.

For the foregoing reasons, the grievance is denied.

J. F. W. WEATHERILL
ARBITRATOR