CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 364

Heard at Montreal, Tuesday, June 13th, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The Brotherhood claims the Company violated Article 9.2 in the 6.1 Agreement when it assessed 5 demerit marks against the record of Mr. Archibald B. Gillingham, Warehouseman Grade 2 - Driver, St.John's.

JOINT STATEMENT OF ISSUE:

The Company charged Mr. Gillingham with "alleged mishandling of container 740356, 16 December 1971" and on December 29, 1971 assessed Mr. Gillingham 5 demerit marks.

The Brotherhood demanded that the Company remove the 5 demerit marks and charged the Company with violation of Article 9.2 in the 6.1 Agreement and the Brotherhood claims that Mr. Gillingham, by placing a container on the flat car, did as instructed.

The Company denied the Brotherhood's demand.

FOR THE EMPLOYEES:

(SGD.) E. E. THOMS
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

P. A. McDiarmid	System Labour Relations Officer, C.N.R., Montreal
H. Peat	Employee Relations Supervisor, C.N.R., St.John's, Nfld
D. MacDonald	Agreements Analyst, C.N.R., Moncton, N.B.
W. F. Harris	System Driving Supervisor, C.N.R., Montreal
B. Lynch	Shed Foreman, 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, Lo.443, B.R.A.C., St.John's, Nfld.
M. Peloquin	Adru. Asst. to Int'l Vice Pres., B.R.A.C., Montreal

AWARD OF THE ARBITRATOR

The grievor was instructed, on the day in question, to place container 840129 on legs at the North Shed and to replace it on the flat car from which it was removed with another container. He did so, replacing the container which he removed from the flat car with another loaded container. As a result, this second container, which contained goods for delivery in St.John was moved out as an empty to North Sydney, causing considerable annoyance to the consignee and considerable embarassment to the Company.

The evidence is conflicting as to the actual instructions given to the grievor. There was filed on his behalf his affidavit to the effect that the instructions given him contained no mention of substituting an empty container for the one which was removed. The viva voce evidence of his supervisor, which I accept, and which is supported by the affidavit of another supervisor as to the general instructions given employees, is that they were told to replace loaded with empty cars. In any event, quite apart from the specific instructions which may have been given, the grievor clearly ought to have known that it would be foolish to place a loaded container on the flat car in those circumstances. I find that he performed his work carelessly and contrary to instructions and that he was therefore properly subject to discipline. The assessment of five demerit marks was not extreme.

The Union raised certain objections to the procedure followed by the Company, as to the sufficiency of notice and the rights of the fellow employee representing him. Investigations in connection with alleged irregularaties are to be held "as quickly as possible", pursuant to Article 9.2 of the collective agreement. The grievor's default occurred on December 16, 1971. It was not, however, discovered until December 20, 1971. Notice was given the next day, and the investigation was held on December 23. The matter was dealt with with despatch, and there was clearly no violation of Article 9 in this regard.

As in Case No. 363, objection was taken to the failure of the investigating officer to record an objection raised during the course of the investigation by the union representative. The objection was recorded after, rather than before, a question objected to was answered. While the record of the investigation is to that extent inaccurate, it must be said that there is no real prejudice to the Union's case therein, and that there has been substantial compliance with the requirements of the collective agreement.

For the foregoing reasons it is my conclusion that there has be no violation of the collective agreement, and that the discipline in

question was imposed for just cause. The grievance is accordingly dismissed.

J. F. W. WEATHERILL
ARBITRATOR