CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 382

Heard at Montreal, Wednesday, October 11, 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 in the 6.1 Agreement when on April 11, 1972 it assessed Motorman R. G. Grouchy 20 demerit marks.

JOINT STATEMENT OF ISSUE:

On April 4, 1972 the Company advised Motorman R. G. Grouchy to report "for the purpose of investigation into your responsibility for damage to Unit 68434 on the Trans Canada Highway, Feb. 23/72."

The investigation was held on April 6, 1972 and on April 11, 1972 Motorman R. G. Grouchy was assessed 20 demerit marks.

The Brotherhood claimed violation of Article 9.2 in the 6.1 Agreement for the following reasons:

a) Motorman R. G. Grouchy did not receive notice of the charges in writing.

b) The investigation was not held as quickly as possible.

c) The February 23, 1972 incident was not caused by the carelessness of Motorman R. G. Grouchy.

The Brotherhood demanded the removal of the 20 demerit marks. The Company denied the Brotherhood's demand.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) E. E. THOMS GENERAL CHAIRMAN	(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
W. F.	Harris	System Driving Supervisor, C.N.R., Montreal
D. J.	Matthews	Labour Relations Assistant, C.N.R., Moncton

And on behalf of the Brotherhood:

E. E. Thoms	General Chairman, B.R.A.C., Freshwater, P.B., Nfld.

AWARD OF THE ARBITRATOR

The three grounds advanced by the Union for the view that the Company was not justified in imposing discipline will be dealt with in turn. First, it is said that the grievor did not receive notice in writing of the charges against him. The notice of investigation, which was in writing, and was at least one day's notice, as required by Article 9.2 of the collective agreement, is set out in the joint statement of issue. As was the case in the notice referred to in Case No. 365 (which involved the same grievor) the notice made clear what was the subject of the investigation and that the grievor's conduct was in question. By Article 9.1, discipline may not be imposed until after an investigation has been held, and the grievor can scarcely be heard to complain that the Company ought to have prejudged the matter before calling him to the investigation. At the outset of the investigation, when asked if he knew the reason for it, the grievor replied "no". It is clear however that he had received the notice and was simply taking the position that the notice was insufficient. For the reasons given, it is my conclusion that this position was not well taken. The first ground of objection must fail.

The second ground of objection is a more substantial one. The investigation must, by Article 9.02, be held "as quickly as possible". The damage to the vehicle occurred on February 23, 1972. It was not a case of an accident, but of vehicle breakdown, and such an occurrence does not of itself suggest the likelihood of conduct for which discipline should be imposed. The daily report and truck trip report filed by the grievor simply indicate that the unit "broke down" and do not suggest anything improper on the grievor's part. Suspicion should have been aroused, perhaps, when the Company became aware of the nature of the damage to the unit, which suggested abusive handling by the driver. It was not until, in the ordinary course the tachograph chart (which was used first for accounting purposes) was studied that the manner in which the vehicle was operated on the day in question became apparent that the Company determined an investigation was necessary. From that point, there wa compliance with Article 9.2. Thus, while there is certainly room for arguing that the Company's suspicions might have been aroused sooner, it is only on a narrow reading of Article 9.2 that there could be said to have been non-compliance. The delay involved is not sufficient to account for the almost complete lapse of memory suggested by the grievor in his answers at the investigation.

The third ground of objection goes to the merits of the case. The

damage caused to the vehicle consisted, according to the statements made by the Company at the investigation, of damage to the power divider (or inter-axle differential) and of damage to three tires. At the hearing of this matter, and it would seem for the first time, the Union took the position that there was no proof of damage to the tires. If hearings in the Office of Arbitration are to proceed effectively, it should not, in general, be necessary that such questions of fact be made the subject of proof. Questions of that sort may and in most cases should be determined in the early stages of the grievance procedure. In the instant case, however, I am prepared to consider the matter without having regard to any alleged damage to the tires of the grievor's vehicle.

The tachograph chart indicates a mileage for the trip, until t point of break down, of 13 miles. The true road mileage was approximately 6.5 miles. The obvious explanation for this is that the wheels were turning while the vehicle was not moving, that is, the wheels were spinning, and to an extent that must have been obvious to the driver. This is further confirmed by the extremely short intervals with which accelerations and decelerations are recorded on the tachograph chart. The conclusion reasonably to be drawn from this evidence is that the grievor was not driving his vehicle properly, and that his abuse of the equipment in this manner was the cause of its break down. At the investigation, the grievor had nothing whatever to say on his own behalf which might suggest any other conclusion. In the result, it must be said that the grievor was careless, and that just cause for the imposition of discipline existed.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL
ARBITRATOR