CANADIAN RAlLWAY OFFlCE OF ARBITRATION

CASE NO. 562

Heard at Montreal, Tuesday, September 14, 1976

Concerning

CANADIAN NATlONAL RAlLWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DlSPUTE:

Claim for removal of discipline assessed, with compensation for time lost by Messrs. R. Ruest, M. Bissonnette, B.Boisclair, G. Giroux and R. Seguin.

JOINT STATEMENT OF lSSUE:

The Union contends that the ten (10) demerit marks and two (2) days' suspension assessed Assistant Foreman R. Ruest and the two days' suspension assessed Sectionmen M. Bissonnette, B. Boisclair, G. Giroux and R. Seguin for "being absent from duty without authority the afternoon of Monday, 26 January, 1976" was unwarranted and that the Company violated Sections 18.1 and 18.2 of Wage Agreement No. 17.

The Company contends that said discipline was Justified and has declined the Union's appeal.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) P. A. Legros System Federation General Chairman	(Sgd.) S. T. Cooke Assistant Vice-President Labour Relations

There appeared on behalf of the Company:

A. D. Andrew	System Labour Relations Officer, C.N.R., Montreal
K. H. Campbell	Roadmaster, C.N.R., Cornwall, Ontario.

And on behalf of the Brotherhood:

P. A. Legros	System Federation General Chairman, B.M.W.E., Ottawa
W. Montgomery	General Chairman, B.M.W.E., Belleville, Ont.
R. Gaudreau	General Chairman, B.M.W.E., Montreal

AWARD OF THE ARBlTRATOR

The facts of the case are not in dispute. The grievors did not return to work following the lunch break on January 26, 1976. This was, to some extent, understandable: it had been raining during the

morning and they had been working, apparently without the benefit of proper rainwear, cleaning wet snow from switches and crossings. Their clothes were very wet, and they had not been able to dry them out or replace them during the meal hour.

While it is not argued that there was an emergency, the work the grievors were doing was important to the proper operation of one of the Company main lines, especially since freezing temperatures were expected that evening. ln these clrcumstances, the grievors' failure to request permission to be absent or even to advise the Company that they would not work, must be regarded as serious misconduct. In the case of an assistant foreman, a Slightly more severe penalty would be justified.

I have no doubt, then, that the grievors were properly subject to discipline on this account. The notice issued to the grievors requiring them to attend an investigation made reference, in error, to a violation of "Rule 1.21". This rule had no bearing on the matter; the rule in fact violated, and which should have been referred to, was Rule 1.24, which forbids absence without authority. No objection was taken to this error at the investigation, at which the grievors were represented by a Union official. There is no doubt that they understood what the real issue was, and the grievors were satisfied with the investigation.

The real issues to be determined relate to the severity of the penalty, and to the suspension of the grievors prior to investigation. Article 18.1 provides as follows:

> "18.1 No employee shall be suspended (except for investigation), disciplined or discharged until he has had a fair and impartial investigation and his responsibility established."

Here the grievors were suspended from service "pending investigation". Article 18.1 contemplates that employees may be suspended for investigation and, in this collective agreement at least, there is no express limitation on that power. This is not to say that the Company would not have to Justify such a suspension, or reimburse employees, in a proper case, for time lost. In a case where a number of employees simply stayed away from work without authorization or notice, I think it cannot be said that the suspension pending investigation was of itself improper.

It remains to be considered whether the penalties ultimately imposed were justified. ln the case of the assistant foreman, the assessment of ten demerits in addition to the other penalty was, for the reasons I have indicated, not unreasonable. ln the case of all the grievors a two-day suspension was assessed. The time out of service pending investigation was to count as the period of suspension. The question is, then, whether a two-day suspension was justified in this case. It was argued that had the investigation been held sooner the penalty would have been less. That is, however, speculation. The delay in the investigation was not attributable to anyone's fault.

As I have indicated above, it is certainly improper for employees to fail to report back to work after the lunch break. Even assuming

that some at least of the grievors had sound reasons to stay home, it was clearly their obligation to report those to the Company. This was especially so where it should have been apparent to them that the work would have to be done. In the circumstances, something more than a warning was justified. In my view, it cannot be said that a two-day suspension went beyond the range of reasonable disciplinary responses to the situation.

For the foregoing reasons, the grievance is dismissed.

J.F.W. WEATHERILL
ARBITRATOR