

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 603

Heard at Montreal, Tuesday, March 8, 1977

Concerning

ONTARIO NORTHLAND RAILWAY

and

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

DISPUTE:

Suspension of Telephone Operator M. Fraboni at New Liskeard for five days.

JOINT STATEMENT OF ISSUE:

Telephone Operator M. Fraboni, at New Liskeard, was suspended for five days for "refusing an assignment after repeated instruction". The Union claims that such severe discipline for this incident was improper and is requesting that Miss Fraboni be paid for the wages lost as a result of her suspension.

FOR THE EMPLOYEE:

(Sgd.) G. E. Hlady
General Chairman

FOR THE COMPANY:

(Sgd.) F. S. Clifford
General Manager

There appeared on behalf of the Company:

A. Rotondo	Manager Labour Relations, O.N.R., North Bay, Ont.
D.V. Allen	Director Personnel & Labour Relations, O.N.R., North Bay, Ont
P. Bigelow	Chief Operator, O.N.R., New Liskeard

And on behalf of the Brotherhood:

G. E. Hlady	General Chairman, B.R.A.C., Barrie, Ont.
T. C. Smith	General Secretary Treasurer, B.R.A.C., Montreal

AWARD OF THE ARBITRATOR

The grievor had been scheduled to work the 2:00 to 6:00 p.m. portion of her shift on "claims". The operator who had done such work during the morning, however, asked to continue with it during the afternoon, and this was agreed to. The grievor therefore worked on the switchboard during the early afternoon, without complaint. At about 3:15 p.m. the other operator's work was completed, and the grievor was asked to go on "claims". According to her own statement, when she was asked by the Chief Operator to work "claims", the grievor replied, "No, I don't feel well. I've got a headache". The Chief Operator then asked the grievor to come over to her desk, where the

grievor was asked if she realized her assignment involved claims work. The grievor replied that she did, but she had a headache, did not feel well, and would rather not do it. She indicated she would work on the switchboard, but was advised that she was not needed there. She then indicated that since there was no work for her on the switchboard, and since she didn't feel up to working claims, she might as well go home, to which the Chief Operator replied, in effect, "O.K., go". Having regard to the context in which this was said, there can be no doubt that it was not meant to relieve the grievor of her responsibility for performing her job. While the grievor might contend that she was following instructions by leaving, she was only given that "instruction", if it can be called such, because of her refusal to carry out her assignment.

There is no doubt that the grievor was properly instructed to work in claims. The issue is whether her refusal was justified. The evidence is that the grievor was under a doctor's care and taking medication for "nerves" and low blood pressure. There is no suggestion, however, that the condition was such as to prevent her from carrying out her work. Again, it appears that the grievor had fallen, while off Company premises, during her lunch hour, but there is again no suggestion that she had injured herself seriously or was in any way prevented from carrying on with her work. She had not sought to be excused from work until she was given her normal assignment. From the material before me, the grievor's refusal to perform this assignment was not justified.

There was, therefore, just cause to impose discipline on the grievor. The question which remains is whether a five-day suspension was proper in the circumstances. The grievor entered the Company's service in 1960. The Company contends, in its submission, that she has an attitude problem, which has been discussed with her on various occasions. There is, however no record of any formal discipline in these circumstances, while the grievor's behaviour was improper, and while I certainly agree that managerial authority must be maintained, it is my view that the five-day suspension which was imposed constituted too severe a penalty. In my view, the most that could reasonably have been imposed by way of penalty would be a two-day suspension. Repetition of such an offence would certainly justify a more severe penalty.

For the foregoing reasons the grievance is allowed in part. It is my award that the five-day suspension imposed on the grievor be reduced to one of two days, and that she be reimbursed for three days' loss of earnings.

J.F. WEATHERILL
ARBITRATOR