CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 726

Heard at Montreal, Tuesday, November 13,1979

Concerning

ONTARlO NORTHLAND RAlLWAY

and

BROTHERHOOD OF RAILWAY, AlRLINE AND STEAMSHlP CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATTON EMPLOYEES - SYSTEM DIVISlON #135

DlSPUTE:

Suspension of Operator J. M. Brisson for 90 days.

JOlNT STATEMENT OF ISSUE:

Railway Operator J. M. Brisson at Cochrane, Ontario was absent from the ticket office on June 3, 1979 when required by the Train Dispatcher. The incident was subsequently investigated and Operator Brisson was assessed a 90 day suspension effective from June 14, 1979. The union appealed for his immediate reinstatement with payment for full loss of wages. The matter has been progressed through the grievance procedure.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) G. E. HLADY	(SGD.) R. O. BEATTY
SYSTEM GENERAL CHAIRMAN	GENERAL MANAGER

There appeared on behalf of the Company:

A. Rotondo - Manager, Labour Relations, O.N.R., North Bay, Ont.
W. R. Deacon - Trainmaster, O.N.R., Englehart, Ont.

And on behalf of the Brotherhood:

G. E. Hlady - System General Chairman, B.R.A.C., Barrie, Ont.
F. E. Soucy - General Chairman, B.R.A.C., Montreal

AWARD OF THE ARBITRATOR

The grievor, a swing Operator, worked the 0700 to 1500 shift on the day in question. His responsibility included both O.N.R. and C.N.R. operations, although it is true that there were very few scheduled trains that day. Nevertheless it was his obligation to be on duty in the ticket office, not merely for service to the public, but also for

handling train orders.

At the investigation, the grievor stated that "Nobody ever defined the limits of the ticket office to me". That statement was not correct, as he had received written advice, some time previously, as to the area where he was to be on duty, and which he was not to leave except with permission of the dispatcher. Even if it might not have been improper for him to leave the ticket office very briefly, as for example to go to the washroom, it was not proper for him to have been away for a protracted period of time, as he was in this case: neither the track foreman nor the dispatcher was able to reach him for the best part of an hour. Had some emergency arisen the grievor's responsibility would have been very grave indeed. The misconduct, of course, is the same whether or not any emergency in fact occurs. Even for the grievor to leave the ticket office for his lunch period, he should obtain clearance from the dispatcher.

lt is clear, therefore, that the grievor was subject to discipline in the circumstances. The question is whether or not the penalty imposed was too severe. ln considering this matter, the whole of the grievor's record is proper to be considered; it is not limited simply to those instances involving a similar offence, although where a similar offence has occurred in the past, that may well have a special significance.

There were, it seems, 35 demerits outstanding on the grievor's record at the time of this offence. Had he been assessed 25 demerits, he would have been subject to discharge. Instead, the Company chose to impose a very lengthy suspension which, while a heavy penalty, at least kept the grievor's job for him. Less than two months before the day in question, the grievor had been assessed 10 demerits for being absent from the ticket office. He had been specifically advised that he must have the dispatcher's authority to leave. He was an experienced employee who knew, and ought to have understood the requirements of his job. Quite apart from the occasions on which demerits had been assessed, the grievor had received many warnings, both written and oral, with respect to his work.

The offence in this case is a serious one, and one for which substantial discipline might be imposed. ln the case of an employee with a record such as the grievor's, the assessment of a substantial number of demerits might well involve his discharge, as has been noted. Rather than terminate employment completely, the imposition of a substantial period of suspension might serve to impress on the employee the importance of his meeting the requirements of his job, and thus achieve the purpose of rehabilitative discipline. This is particularly to be hoped for in the case of an employee having some 13 years' seniority. In the circumstances, I think it cannot properly be said that the penalty imposed went beyond the range of reasonable disciplinary responses to the situation. Rather, it gave the grievor the opportunity to reflect on his situation, and a chance to re-establish himself as a good employee.

For the foregoing reasons, it is my conclusion that there was just cause for the discipline assessed. The grievance is accordingly dismissed.

J. F. W. WEATHERILL
ARBITRATOR