

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 737

Heard at Montreal, Tuesday, January 8, 1980

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Discipline assessed K. D. Green, Trainman, Vancouver for failure to complete assignment.

JOINT STATEMENT OF ISSUE:

On November 20, 1978, Mr. K.D. Green was called from Vancouver to protect the Deerholme Switcher Assignment. On November 21, after the completion of one tour of duty, Mr. Green booked sick and returned to Vancouver.

Effective January 10, 1979 the Company assessed Mr. Green 15 demerit marks for failure to complete his assignment at Deerholme. The Union contends that Mr. Green's failure to complete his assignment does not justify the assessment of 15 demerit marks.

The Company's position is that the discipline is warranted.

FOR THE EMPLOYEE:

(SGD.) L. H. MANCHESTER
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S. T. COOKE
ASSISTANT VICE-PRESIDENT -
LABOUR RELATIONS

There appeared on behalf of the Company:

L. R. Weir - System Labour Relations Officer, C.N.R., Montreal
J. A. Degagne - Assistant Superintendent Transportation, C.N.R.,
Vancouver
M. C. Darby - Labour Relations Assistant, C.N.R., Edmonton

And on behalf of the Brotherhood:

L. H. Manchester - General Chairman, U.T.U.(T) - Winnipeg

AWARD OF THE ARBITRATOR

The issue to be determined is whether or not the grievor's failure to complete his assignment at Deerholme was improper or not. He did not complete the assignment because he booked off sick. If he was indeed sick, that would be a proper excuse, and he would not be subject to discipline. If he was not sick, or not sick enough to justify booking off, then his action was improper, and he would be subject to discipline.

The assignment on which the grievor was working was not a popular one, and there was some motivation for him to try to get out of it. He did, however, report for the assignment and work one shift, and it has not been established that there was any remarkably strong motivation for his then seeking to avoid the rest of it.

The evidence which the grievor gave at his investigation was that he felt nauseous and "had the runs" during his tour of duty, that following his tour of duty he went fishing (in a rented boat) for an hour and a half and then went to a restaurant for two hours before returning to the bunkhouse, when he telephoned the dispatcher to book sick. The other trainman with whom the grievor was working seems to have done the same. The grievor then left the bunkhouse and took the ferry back to Vancouver, a trip of some three hours.

There is evidence that the grievor had been under a doctor's care for several months for "a run down condition and nerves". There is nothing to suggest, however, that that condition prevented the grievor from working, or that it caused him to book off sick on the occasion in question. The grievor was in fact able to work the next day and reported (in Vancouver) at about 1000 hours.

While I think the grievor's statement that he felt nauseous and "had the runs" must be accepted, it does not necessarily follow that he was unable to work and was justified in booking off sick. The seriousness of his complaint is obviously a matter of degree. The grievor certainly did not suffer from it to the extent that he could not work on November 21; nor to the extent that he could not go out in a fishing boat (indeed, he stated that he "felt excited about going fishing at that time"); nor to the extent that he could not spend two hours in a restaurant or take a three-hour trip on a ferry. All that activity is inconsistent with his suffering to any serious extent from the complaint he described.

In all of the circumstances, it is my conclusion that the grievor was not in fact sick to the extent that he was justified in booking off sick. His use of that device was improper, I find, and he was subject to discipline on that account. The number of demerits assessed was not excessive. Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR