CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 751

Heard at Montreal, Tuesday, April 8, 1980

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Discipline assessed R. Salituro, Transportation Clerk, Kamloops for inciting job action by fellow employees at Kamloops and initiating an illegal work stoppage.

JOINT STATEMENT OF ISSUE:

At approximately 11:45 hours on August 17, 1979 the Carman members of the Shopcraft Organization commenced picketing at Kamloops (Junction) Yard.

Mr. Salituro and other employees who commenced their assignments prior to 11:45 hours left their assignments at the Carload Centre Building around noon.

As a result of the Company's investigation, Mr. Salituro was assessed 30 demerit marks effective August 27 for inciting job action by fellow employees and initiating an illegal work stoppage.

The Union contends that Mr. Salituro did not incite job action and appealed the discipline.

The Company denied the appeal.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) J. D. HUNTER	(SGD.) S. T. COOKE
NATIONAL VICE PRESIDENT	ASSISTANT VICE-PRESIDENT - INDUSTRIAL RELATIONS

There appeared on behalf of the Company:

J. Fellows	-	System Labour Relations Officer, C.N.R., Montreal
C. A. McHardy	-	Regional Labour Relations Asst. Edmonton
K.P. McGinley	-	Asst. Superintendent, C.N.R., Kamloops, B.C.

And on behalf of the Brotherhood:

W. Apps - Regional Vice President, C.B.R.T., Vancouver
R. Salituro - (Grievor) - Kamloops, B.C.

AWARD OF THE ARBITRATOR

On the day in question some of the employees in the grievor's bargaining unit left work, apparently out of sympathy with employees in another bargaining unit, some of whom had established a picket line outside the employer's premises. It is unnecessary for the purposes of this case to determine whether or not that picket line was in aid of a legal strike. There was a picket line, legal or illegal, and employees in the grievor's bargaining unit left work when they realized it was there. The employees in the grievor's bargaining unit were covered by a collective agreement which was in force at the material times. From the material before me, it is my view that the employees in the grievor's bargaining unit left work on the day in question pursuant to an illegal strike. The issue is whether the grievor incited and initiated that strike. If he did, then he was properly subject to discipline.

The evidence is that the grievor, who is Local Chairman of the Union, left his own work at about noon on the day in question. He was seen thereafter speaking to different employees or groups of employees in different areas of the Company's operations. Following the grievor's appearances in these places, some of the employees left work. From all of the material, the very probable conclusion to be drawn is that something the grievor said or did led to the employees' leaving work in circumstances which, as I have found, amounted to an illegal strike. The grievor denies having counselled a strike and a number of his fellow employees signed a statement that "at no time, were we told - - - to leave work" by the grievor. The effect of this statement is weakened by the fact that, it is sad to say, a number of persons signed it who had not even been present at the material time. In any event, the signatories were cautious to say, "We were only advised that the Car Dept. had put up a picket". The grievor's thoroughness in giving such advice - even if that is all there were to it - belies the argument that the other employees' leaving was a mere coincidence. Further, the grievor booked sick, as, so he said, he was in pain from his ulcers. That is quite inconsistent with his then having spent nearly two hours in going about the various employees "informing" them of the existence of a picket line.' Again, the very probable conclusion to be drawn is that the grievor was in fact inciting and initiating an illegal strike, and I so find.

Accordingly, the grievor was subject to discipline, as I have noted. It appears that the Company did not issue specific instructions to employees to stay at work. Such instructions should not have to be given, although if they had been, and had been disobeyed, the employees who went on the illegal strike would have compounded their offence. This does not alter the improper character of the grievor's behaviour. His offence was a very serious one and it cannot be said that the assessment of thirty demerits went beyond the range of reasonable disciplinary responses to the situation. Accordingly, the grievance is dismissed.

J. F. W. WEATHERILL
ARBITRATOR