

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 867

Heard at Montreal, Wednesday, October 14TH, 1981

Concerning

ONTARIO NORTHLAND RAILWAY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood claims that Mr. J. Prescott was unjustly assessed discipline when he declined to work the assignment of Chef on Train 120, March 21st, 1981.

JOINT STATEMENT OF ISSUE:

On March 21st, 1981, the Company instructed Mr. Prescott that he would be required to be the Chef on his assigned Crew that day. Mr. Prescott declined, was suspended and advised to appear for an immediate investigation. Mr. Prescott declined to appear at an immediate investigation on the basis that he was suspended. He was charged with his refusal to protect the position of Chef on Train 120, Saturday, March 21st, 1981, and failing to report for immediate investigation on March 21st, 1981.

Following the investigation on March 25th, 1981, Mr. Prescott was assessed suspension of 2 trips for refusal to protect the position of Chef, Train 120, March 21st, 1981, as instructed by the Supervisor. The Brotherhood claimed that no discipline should have been assessed and claimed loss of wages for the two trips suspended.

The Company denied the grievance.

FOR THE EMPLOYEES:

(SGD.) T. N. STOL  
REPRESENTATIVE

FOR THE COMPANY:

(SGD.) R. O. BEATTY  
GENERAL MANAGER

There appeared on behalf of the Company:

A. Rotondo, Manager Labour Relations, North Bay, Ontario  
J. H. Singleton, Manager Passenger Services, North Bay,  
Ontario.

And on behalf of the Brotherhood:

T. N. Stol, Representative, CBRT and GW, Local 37.

AWARD OF THE ARBITRATOR

The grievor, whose classification was that of Waiter, was a member of a crew assigned to work on the day in question. It would appear that due to the absence of another crew member, he had been advised that he would work as a Steward on that run. Steward is the highest-rated position in the crew.

Because of the illness of the Chef, however, the grievor was advised that he would be required to act as Chef on the run in question. The grievor refused to do so. It is because of that refusal that he was subsequently disciplined.

There was, in my view, no valid reason for the grievor's refusal of the directive to work as Chef on the run in question. It may be that he was told that he would be paid at the rate of Chef rather than at the higher rate of Steward. If that is so, that advice was probably wrong, although that issue is not before me for determination. Even if the advice as to payment were wrong, however, it was still the grievor's obligation to accept the assignment and, if he felt he was improperly paid, to grieve in that respect.

It was also suggested that junior qualified employees were available, who should have been called. There were junior qualified employees, scheduled to go out later on other assignments. I was not referred to any provision of the Collective Agreement which would require the Company to transfer employees from other assignments in these circumstances. Thus, I do not consider this objection to be based on a valid interpretation of the Collective Agreement. Again, however, even if other employees should have transferred, the proper course for the grievor was to follow his instructions and to file a grievance if he wished to do so. There was no justification for refusal of the Company's directive.

This was a case in which discipline was appropriate. The rule is well established and none of the circumstances which might create an exception to it arose here. The penalty imposed was not excessive.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL  
ARBITRATOR