CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.891

Heard at Montreal, Tuesday, December 8, 1981

Concerning

ONTARIO NORTHLAND RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Discipline assessed Brakeman W. Colazzi resulting in his dismissal.

JOINT STATEMENT OF ISSUE:

On Friday, May 29, 1981, a "handie-talkie" was stolen from a locomotive in the Timmins Yard. Following an investigation, Brakeman W. Colazzi was assessed 10 demerit marks for "Failure to protect Company property...". At the time, he had 55 demerit marks on his record. He was subsequently dismisscd account accumulating a total of 65 demerit marks. The Union is appealing the assessment of discipline.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) B. F. NEWMAN	(SGD.) R. O. BEATTY
GENERAL CHAIRMAN	GENERAL MANAGER

There appeared on behalf of the Company:

A Rotondo - Manager Labour Relations, North Bay, Ont.
D. K. Hagar - Asst. Supt. Train Oprs., Englehart, Ont.

And on behalf of the Employees:

J. H. Sandie, Vice-President, UTU, Sault Ste. Marie, Ont.
B.F.Newman - Chairman, UTU, North Bay, Ont.
J. Mainville - Local Chairman, UTU, North Bay, Ont.

AWARD OF THE ARBITRATOR

On the day in question, the grievor had been issued handie-talkie No. 62 - a portable radio unit which would usually be carried on his person while carrying out his duties - for use on extra 1731 Englehart to Tim?ins and return. The grievor was responsible for the proper care and use of this equipment, and its safe return.

It was not necessary that there be any expressly-stated rule requiring the grievor to take proper care of the equipment he might use in the course of his duties. There was reference to a number of instances in which employees have been disciplined for failure to

take proper care of handie-talkies, and it would be my view that discipline was properly imposed in those cases. Proper use of the employer's equipment and supplies is an inherent part of any job, and there need be no special rule set out to make that clear.

In the instant case, the grievor left the handie-talkie hanging on the arm rest of the fireman's seat in the cab of the engine of his train, while he and other members of the crew went to have lunch at Timmins, prior to beginning the return trip to Englehart. The grievor and the others were not gone long, and went to a restaurant a short distance from the station. It is not suggested there was anything wrong in that.

The train was not entirely unattended, as the conductor remained in the van, where he ate his meal. The train was left on track one, adjacent to the main line, directly in front of the station. The engines were left running, although it would seem that the engineman took the usual steps to secure the engine - so as to make it at least unlikely that any interloper would be able to move it. As has been noted, the grievor left the handie-talkie in the cab,and crew members left certain of their own personal belongings there as well. As to the handie-talkie, it was the grievor's statement that he "never thought of locking it in the van or leaving it in the station". The issue is whether or not his leaving the handie-talkie in the van as he did was improper behaviour of a sort which would subject him to discipline.

It was, of course, unfortunate that the handie-talkie was left in the cab, because it was stolen. While the crew was away, three youths entered the cab, apparently toyed with the controls of the engine, attempted to steal the crew's property (which they dropped while running away) and did steal the handie-talkie. The three youths were seen running from the engine by the Assistant Roadmaster.

While the fact that the handie-talkie was stolen reveals that it would have been better to have left it (and the crew's own property) in the station or the van, it is not simply by virtue of hindsight that the grievor's conduct is to be evaluated. If what he did was improper, he would be subject to discipline whether or not the property was stolen.

There are no doubt circumstances in which the leaving of valuable property such as a handie-talkie unattended would be improper, and give rise to discipline. It would be a question in each case of the particular place, general area and length of time involved. No one factor is necessarily determinative, and all of the circumstances must be considered. In the instant case, the grievor's action does not appear to have been much different from that of. the engineman. There are, it seems, various pieces of equipment in the cab of an engine which might be attractive to thieves. These were left unattended and, as noted, the engines were left running. It does not appear that the engineman was disciplined, nor that it was unusual that an engine be left in that way. It does not appear that there was any particular reason to anticipate the presence of outsiders in the area where the train was stopped, and it is significant that it was in front of the station and thus in view of company officials. In the circumstances of this particular case, I do not consider that

the grievor's leaving the handie-talkie where he did was negligence or carelessness of a sort which would subject him to discipline. If it is considered that such equipment should in no circumstances be left in an unattended engine cab, particular instructions to that effect would be given. There is, however, a difference between criticism and discipline, and while the grievor might perhaps be criticized for leaving the equipment as he did (I make no finding as to that), he was not, in my view, subject to discipline in this case.

It is therefore my award that the ten demerits be removed from the grievor's record, and that as a consequence he be reinstated in employment without loss of seniority or other benefits and with compensation for loss of earnings. His discipline record should remain at 55 demerits (time out of service not to count toward reduction of demerits).

J. F. W. WEATHERILL,
ARBITRATOR.