CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 912

Heard at Montreal, Wednesday, February 10, 1982

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF RAILWAY AND AIRLINE CLERKS

EX PARTE

DISPUTE:

This concerns discipline assessed Highway Motorman C. Snow, Grand Falls, Newfoundland.

BROTHERHOOD STATEMENT OF ISSUE:

Company claims Highway Motorman C. Snow failed to submit his tachograph chart.

It is the Unions position that Mr. Snow submitted his tachograph chart in a manner consistent with past practice which was acceptable to the Company over the years.

The Company declined to remove the discipline.

FOR THE BROTHERHOOD:

(SGD.) M. J. WALSH
GENERAL CHAIRMAN

There appeared on behalf of the Company:

W. A. McLeish	- System Labour Relations Officer, CNR, Montreal
W. R. Brisbourne	- Manager Labour Relations, CNR, Montreal
B. Everard	- Employee Relations Officer, TerraTransport, St. John's, Nfld.

And on behalf of the Brotherhood:

M. J. Walsh	- General Chairman, BRAC, St. John's, Nfld.
Wayne Greenland	- Local Chairman, BRAC, St. John's, Nfld.
Harry Stryde	- Local Chairman, BRAC, Lewisport, Nfld.

AWARD OF THE ARBITRATOR

In the instant case an "informal investigation" was held in respect of the "minor incident" in question, namely the alleged failure of the grievor to turn in tachograph charts for runs to Alexander Bay

and return on December 24 and December 31, 1980.

The grievor refused to sign the "incident report" which appears to be a record of the informal investigation. It is said that the grievor's refusal to sign was an indication that he did not accept the Company's conclusion. That cannot be, however, since the report does not set out any conclusion. The discipline, assessment of 10 demerits, was imposed the following day. It is not suggested that the "incident report" is anything other than an accurate transcription of the informal investigation and there appears to be no good reason why the grievor should not have signed it.

Following the imposition of the discipline, a grievance was filed on the grievor's behalf. While the grievance does not expressly request a "formal investigation", it is clear from its terms that the grievor did not accept the "conclusion" reached by the Company, namely that he had failed to turn in his tachograph charts, and that the issue raised by the grievance was not merely that of the extent of the penalty, but that of just cause for any discipline. While this would not appear to have been in strict compliance with the procedures set out in the Collective Agreement, no objection in that respect appears to have been raised until after the matter was referred to arbitration. In my view, it was then too late to assert, in effect, that the grievor was estopped from denying the offence and that the sole issue must be that of the severity of the penalty. Both issues are properly before me in the instant case.

While the grievor did turn in certain papers relating to his run in the usual way (and there is no issue as to the procedure followed) the tachograph charts were not among them. It is possible, although it would seem quite improbable, that the tachograph charts were included in the material submitted, but were removed therefrom by some third person No motive appears for such an act. On the other hand, the grievor may have had a motive for withholding the tachograph charts which would apparently have shown his early departure from Gander - perhaps to attend the shed Christmas and New Year's Eve parties in Grand Falls - on the days in question. The grievor did not refer to any special permission he may have had in that regard at the investigation.

From the material before me, it is my conclusion, on the balance of probabilities, that the grievor did not turn in his tachograph charts on the days in question. This was an offence for which he had previously been warned, and the assessment of 10 demerits was not excessive. Accordingly, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.