

CANADIAN RAILWAY OFFICE OF ADJUSTMENT

CASE NO. 944

Heard at Montreal, Tuesday, May 11, 1982
Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Discipline assessed Mr. B. Kanary for conduct unbecoming an employee.

JOINT STATEMENT OF ISSUE:

Effective July 10, 1981, Machine Operator, Mr. B. Kanary, was advised by the Company that he was restricted from working positions on Gangs for a period of two (2) years.

The Union contends that there was no cause for this discipline and that the discipline was improper.

The Company denied the Union's contention.

FOR THE BROTHERHOOD:

(SGD.) A. F. CURRIE
System Federation General Chairman
Western Lines

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
Director Labour Relations

There appeared on behalf of the Company:

K. J. Knox - Manager Labour Relations, CNR, Montreal
C. L. LaRoche - Employee Relations Officer, CNR, Montreal
D. A. Skelly - Employee Relations Officer, CNR, Winnipeg
P. Guay - System Production Supervisor, CNR, Montreal
J. Kitella - Extra Gang Foreman, CNR, Saskatoon

And on behalf of the Brotherhood:

A. F. Currie - System Federation General Chairman, BMWE,
Winnipeg
F. L. Stoppler - Vice-President, BMWE, Ottawa

AWARD OF THE ARBITRATOR

The "conduct unbecoming an employee" with which the grievor was charged includes his misrepresenting himself as holding a position in the Union organization, his making untrue statements concerning living and working conditions on the gang on which he worked, his making unfounded charges of racism against the Company, and his causing disruption and dissension on the gang.

On the material before me, all of those charges are made out. The grievor purported to be the "spokesperson" for a group of employees,

and while such a role appears to be accepted, in certain circumstances, on the Atlantic Region (where the grievor worked for a time), it has no currency on the Prairie Region, where most of the material events occurred.

The grievor did not in fact represent any group of employees, and was not recognized by the Union or the Company as having any rights of representation, however limited. By seeking to pass himself off as a "spokesperson" for a group of employees, the grievor, I find, sought to mislead employees and the public. Such a misrepresentation was to the detriment of the employees, the Union and the Company. It was improper behaviour, and the grievor was properly subject to discipline therefor.

The grievor made, and published, a number of statements with respect to living and working conditions on the Company's property, and a number of charges of racism against the Company. These statements and charges were almost all untrue. To the extent that certain statements as to the condition of washhouses and other facilities were true, the implication - clearly intended by the grievor - that they were the Company's fault, was false. The strong language - misinterpreted by the grievor - used by the Company's Foreman with respect to the condition of those facilities was used in an attempt to persuade employees to treat them properly. The Company was absolved of charges of racism by the Human Right Commission, before whom the charges were properly brought. On the material before me, there was no foundation for them whatsoever, as the grievor, to put the matter most gently, ought to have known.

The grievor published these defamatory and untrue accusations in a manner which would appear calculated to do the most harm to his Employer. This behaviour was obviously wrong, was disloyal and dishonest, and clearly subjected the grievor to discipline. That there was just cause for discipline there is no doubt. The only issue of substance is as to the nature of the penalty imposed.

While the grievor was not changed to another classification, I agree with the Union's contention that he was, in effect, demoted. The "restriction" on his work affected his work opportunities and his earnings. There is no real basis for such a restriction in the grievor's actual work record. Antisocial behaviour such as the grievor's is curable, if at all, by progressive discipline. In my view, a restriction of job opportunities was not an appropriate disciplinary response.

The grievor's improper conduct has caused substantial harm to the Company and to others, and would justify the most severe discipline. While I consider that the restriction with respect to his work was an inappropriate disciplinary response, I am of the view that, even where a system of demerit points is in effect, a period of suspension would have been justified. Accordingly, while it is my award that the restriction on the grievor's working on system gangs be lifted forthwith, and that he be entitled to exercise seniority as though such restriction had not been imposed, I make no award as to compensation, and award the substitution of forty demerits - as of the date of the hearing of this matter - for the penalty imposed by

the Company.

J. F. W. WEATHERILL,
ARBITRATOR