CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 947

Heard at Montreal, Wednesday, May 12, 1982

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
EASTERN REGION

and

UNITED TRANSPORTATION UNION
EX PARTE

DISPUTE:

The Dismissal of Conductor/Trainman K. Glad, account accumulation of demerit marks.

EMPLOYEES' STATEMENT OF ISSUE:

Effective October 2, 1980, the Company assessed Mr. K. Glad ten (10) demerit marks for excessive absenteeism. Subsequently he was dismissed by the Company for accumulation of demerit marks. In addition, the Company claims the grievance has not been progressed properly.

The Union contends the grievance has been properly progressed in accordance with the Collective Agreement and the ten (10) demerit marks were unjust and not proper.

The Organization further requests that the ten (10) demerit marks be removed from Mr. Glad's record and he be restored to Company service with full seniority.

FOR THE UNION:

(SGD.) B. MARCOLINI
General Chairman

There appeared on behalf of the Company:
L. A. Clarke - Supervisor, Labour Relations, CP Rail, Toronto
B. P. Scott - Labour RElations Officer, CP Rail, Montreal
And on behalf of the Union:
B. Marcolini - General Chairman, UTU, Toronto
J. Sandie - Vice-President, UTU, Sault Ste. Marie
J. Anderson - Local Chairman, 571, UTU, Schreiber

INTERIM AWARD OF THE ARBITRATOR

The Company has raised a preliminary objection as to the arbitrability of this matter, and contends that the matter was not progressed to Step 2 of the Grievance Procedure within the appropriate time limits.

The cause of the grievance arose on October 10, 1980. The grievance was filed by the Local Chairman on November 20, 1980, within the sixty-day period contemplated by the Collective Agreement. The Superintendent replied on November 25, denying the grievance. It was then open to the General Chairman to appeal the decision to the General Manager, within sixty days. No such appeal was made within that time, and indeed it would appear that the matter was not brought to the General Chairman's attention at that time.

On January 18, however, the Local Chaiman wrote again to the Superintendent, making further representations on the matter and seeking to have the decision changed. This was analogous to what occurred in Case No. 142. It would certainly have been open to the Superintendent to indicate that he had made his decision, and it was the Union's responsibility to take the next step. The Collective Agreement, however, contemplates that time limits may be extended by mutual agreement (there is no requirement of writing), and it is the Union's evidence that there was in fact such a mutual agreement in this case. That is the evidence of the Local Chairman, and there is no evidence to refute it. In this respect, then, the matter differs from Case No. 142.

The Superintendent replied to the Union's letter on April 8, 1981, stating that "your appeal is further denied". That is quite consistent with there having been an extension of time, and there is no suggestion in that letter that the appeal itself was improper. It was received and dealt with and in my view - having regard to the evidence in this case - any objection the Company might have taken was waived by agreement.

A further appeal was then taken by the General Chairman to the General Manager on June 1, 1981, which was within sixty days of the Company's decision of April 8. The General Manager replied on July 21, 1981, raising the objection that the appeal had not been processed in timely fashion, but denying the grievance in any event. For the reasons set out above, it is my view that the appeal was in fact a timely one.

While in most cases the Union would then have had a period of sixty days in which to institute proceedings to submit the matter to Arbitration, this limitation is subject to the following exception (which I agree contemplates timely processing of the grievance in other respects) : an appeal against the dismissal of an employee which does not involve a claim for payment for time lost, may be submitted to the Canadian Railway Office of Arbitration at any time within two years from the date of dismissal. The instant case is against dismissal and does not involve a claim for payment for time lost. It is, therefore, one coming within the exception. It has been submitted to this office within two years from the date of dismissal. For the reasons given earlier it cannot now be objected (there having been an agreed extension) that the matter was not properly processed at an earlier stage. Accordingly, the Company's objection must be dismissed. I find that the grievance is arbitrable.

J. F. W. WEATHERILL,
ARBITRATOR

There appeared on behalf of the Company - Tuesday, July 13th, 1982:

L. A. Clarke - Supervisor, Labour Relations, CP Rail, Toronto
B. P. Scott - Labour Relations Officer, CP Rail, Montreal

And on behalf of the Union:

B. Marcolini - General Chairman, UTU, Toronto
J. Sandie - Vice-President, UTU, Sault Ste. Marie

AWARD OF THE ARBITRATOR

As was found in the Interim Award, this grievance is arbitrable. While the issue relates to a dismissal for accumulation of demerit marks, the particular question is whether or not the assessment of ten demerits on October 2, 1980, for excessive absenteeism from July 18 to September 29 of that year, was justified. If it was, then since the grievor's record then stood at 55 demerits, he would then have accumulated 65 demerits, and would be subject to discharge.

There is no doubt as to the facts relating to the grievor's absenteeism during the time referred to. In that period of 74 calendar days, the grievor was booked off and unavailable on 38, which is to say for more than half the time. It is to be noted that a high proportion of these absences were for Saturdays and Sundays, in conjunction with a Friday or a Monday, or both.

At the investigation called with respect to his absenteeism during the period referred to, the grievor's only explanation was that he "just wasn't feeling well over this period of time". He had no explanation to offer for the fact that a high proportion of the time booked off was on weekends, and had nothing to add on his own behalf except to say that if he could keep his job, his record would be greatly improved.

With the exception of ten demerits assessed in October, 1979, for violation of safety rules, the grievor's discipline record is entirely made up of matters relating to attendance at work. On July 17, 1980, he had been cautioned for an offence quite similar to that in issue here: excessive absenteeism from February 14 to June 29. Again, the grievor had been off work more than half the time. At that time the grievor had been advised, in the presence of the local union president, that his job would be in jeopardy unless there were a marked improvement in his work habits. There was, obviously, no improvement whatever, and the grievor again became subject to discipline. The assessment of ten demerits was appropriate.

It was the union's contention that the grievor was notproperly subject to discipline in the circumstances, because his absence was due to illness. That position is supported by an "attending physician's statement" which is undated but appears to have been made in early October, 1980, in which a doctor sets out his diagnosis that the grievor was suffering from mononucleosis. The certificate

indicates that the grievor first visited the doctor on October 2, 1980, and states that he was disabled from and after September 26, 1980.

Although the grievor would appear to have seen his doctor on October 2, which is the same date as that on which the investigation of his absenteeism was held, the grievor made no mention of that in his statement, and made no suggestion that he was sick, apart from "just not feeling well." That may indeed be a symptom of mononucleosis, but from the doctor's statement, the symptoms first appeared on September 26. The diagnosis simply does not apply to the bulk of the period in which the grievor was so frequently absent, nor does it explain, in any event, the high proportion of weekend absences. In view of his record, and of the caution he had received, it was clearly incumbent on the grievor to seek medical advice at an earlier stage, if there were in fact substantial reasons for his not reporting for work.

On the material before me, only a few days of the grievor's absences are accounted for on medical grounds. The bulk of this absenteeism was not justified, and the grievor was subject to discipline on that account. As noted earlier, ten demerits was not excessive.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.