

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 988

Heard at Montreal, Wednesday, October 13th, 1982

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Discipline assessed Trackman N. Caron for unauthorized absence from duty.

JOINT STATEMENT OF ISSUE:

Trackman N. Caron was absent from duty on June 10, 11 and 12, 1981 and consequently charged with a violation of Rule 1.24 of the Maintenance of Way Rules 1233F. An investigation was held June 22, 1981 and he was assessed 15 demerit marks for absence without authorization. This resulted in Mr. Caron's discharge from service due to accumulation of demerits.

The Brotherhood appealed on the basis that the discipline assessed which resulted in the grievor's discharge was too severe.

The Company declined the appeal.

FOR THE EMPLOYEE:

(SGD.) PAUL A. LEGROS
System Federation
General Chairman

FOR THE COMPANY:

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

There appeared on behalf of the Company:

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| K. J. Knox | - Manager Labour Relations, CNR, Montreal |
| C. Baillargeon | - Roadmaster, CNR, Drummondville |
| R. Paquette | - Labour Relations Assistant, CNR, Montreal |
| T. Ferens | - System Labour Relations Officer, CNR, Montreal |

And on behalf of the Brotherhood:

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| Paul A. Legros | - System Federation General Chairman, BMW, Ottawa |
| R. Gaudreau | - General Chairman, BMW, Montreal |
| F. L. Stoppler | - Vice-President, BMW, Ottawa |
| N. Caron | - Grievor, St. Chrysostome, Quebec |

AWARD OF THE ARBITRATOR

TRANSLATION

Rule 1.24 of the Maintenance of Way Rules (1233F states:

"Employees must not absent themselves from duty, exchange duties with others, or engage substitutes without authority."

On June 10, 11 and 12, 1981, the grievor went absent from work without informing his foreman or roadmaster. He said that he was absent on account of sickness, but produced no medical certificate even though he knew that a certificate had to be presented for each absence. He did not see his doctor on that particular occasion, even though he was "too sick to notify his foreman of his absence".

Being sick is obviously not an occupational misconduct. It is, however, wrong not to inform one's employer, except where this is impossible. In the case before us, the fact that it was impossible has not been established. I therefore conclude that discipline was warranted. As regards the severity of the discipline (15 demerit marks), although this seems to me quite severe for a three-day absence, I note that the absences on June 10, 11 and 12 formed part of a series of absences that had not been subjected to discipline. Furthermore, the grievor's record shows that he had been disciplined and warned on countless occasions for the same type of misconduct. In the light of these circumstances, I would not decrease the discipline assessed in this case. It should be noted that even if the discipline assessed was a mere 5 demerit marks, the result would have been the same for the grievor had a cumulative total of 55 marks on his record and at 60 points, dismissal is justified.

Previous instances of discipline cannot be disputed at this point. It should nevertheless be noted that the employer did not discipline the grievor on every possible occasion. Absenteeism is a serious problem and in the grievor's case, the employer has tackled it with moderation.

As the grievor has some fifteen years of seniority and as his absences only began in 1979 with the evidence being that he is indeed sick (although there is no suggestion that he is entitled to sick leave), in this type of case possibilities other than straightforward dismissal for accumulation of 60 demerit marks should be contemplated. The Company attempted to counsel the grievor and make him cooperate, and also invited him to avail himself of the Employee Assistance Program. The grievor did not follow this sound advice and refused to participate in the Program. I conclude that the employer was justified in dismissing the grievor, which is the natural consequence on accumulating 60 demerit marks.

For these reasons, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.