

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1000

Heard at Montreal, Tuesday, November 9th, 1982

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Dismissal of Trainman R. J. Gordon of Niagara Falls, Ontario account accumulation of demerit marks, effective March 10, 1981.

JOINT STATEMENT OF ISSUE:

On January 23 and 24, 1981, Mr. R. J. Gordon was assigned as a Brakeman on Passenger Train Nos. 636-635 between Niagara Falls and Toronto. Trainman Gordon's deportment and conduct while en route and on duty were called into question in writing by a passenger on Train No. 636, January 23, 1981 and again, by a different passenger, on Train No. 636, January 24, 1981. Subsequent to separate investigations being held into each incident, Trainman Gordon was assessed 20 demerits for his actions on January 23, 1981 and 30 demerits and restricted from operating in passenger service for his actions on January 24, 1981 which, when coupled with his discipline record, resulted in his dismissal for accumulation of demerit marks.

The Union appealed the discipline assessed on the grounds that it was too severe and that Trainman Gordon's discharge was unjustified.

The Company has declined the Union's appeal.

FOR THE EMPLOYEES:

(SGD.) R. A. BENNETT
General Chairman

FOR THE COMPANY:

(SGD.) G. E. MORGAN
Director, Labour Relations

There appeared on behalf of the Company:

H. J. Koberinski	- System Labour Relations Officer, CNR, Montreal
M. Delgreco	- Manager Labour Relations, CNR, Toronto
J. A. Sebesta	- Coordinator Transportation - Special Projects, CNR, Montreal
D. J. Wallace	- Assistant Superintendent Transportation, CNR, Hamilton

And on behalf of the Union:

R. A. Bennett	- General Chairman, UTU, Toronto
R. J. Proulx	- General Chairman, UTU, Quebec

G. E. McLellan - General Chairman, UTU, Toronto
J. M. Hone - Vice General Chairman, UTU, Ottawa
M. P. Gregotski - Local Chairman, Local 537, UTU, Niagara Falls

AWARD OF THE ARBITRATOR

The grievor was dismissed for accumulation of demerit marks. Prior to the events in question, the grievor's record stood at 30 demerits. He was then assessed 20 demerits in respect of what occurred on January 23, 1981, and then 30 demerits in respect of what occurred on January 24 of that year. What is to be determined is whether or not, with respect to each of those matters, there was just cause for the discipline imposed.

While what is involved in each case is the same type of offence, these were nevertheless distinct incidents, and must be considered separately. There was nothing improper in the Company's conducting separate investigations.

While the evidence is contradictory as to the details, there is no doubt that in each case an incident occurred in the course of the grievor's duties which led to the filing of a passenger complaint. These complaints also related to the behaviour of the Conductor, who was the subject of a separate investigation and was also disciplined.

On January 23, 1981, the grievor had locked one car of the three-car consist, so that the space would be available for passengers boarding at a later point. He had done this at the direction of the Conductor. A passenger entraining at St. Catharines sought access to the locked car, which he thought would be more comfortable, and where he would have privacy to review certain business papers. There was, it appears, considerable space open in the car in which passengers were then being boarded.

The grievor advised the passenger that the car was being held for passengers boarding later. There were in fact a number of good reasons for its being held, although it would not have been amiss to accommodate the passenger's wishes. The grievor might have advised the passenger that he would speak to the Conductor about it. Instead, he simply told the passenger - in effect - that those were his orders. The passenger's complaint was that the grievor screamed at him and verbally abused him, and that he abused him again in the coach in front of other passengers. The grievor denies this.

It is difficult to make findings of fact with respect to incidents such as this which, by their very nature, are not easily susceptible of accurate and objective recollection by those involved. I think it is clear that the grievor was not cooperative and did not give the passenger the sympathetic ear, or even the basic courtesy which he ought to have been able to expect. I am not, however, prepared to find, on the material before me, that the grievor indulged in the verbal abuse alleged. While the grievor was subject to some discipline in the matter, it is my view that just cause has not been shown for the assessment of any penalty greater than 10 demerits, and the penalty imposed is reduced accordingly.

The complaint with respect to the grievor's conduct on January 24,

1981, relates to offensive or silly behaviour on his part on several occasions during the trip that day. This included, according to a passenger's letter of complaint, rather brusque indications to passengers as to the proper exit door; some silly remarks about the use of his ticket punch, and on two occasions, his recounting ethnic jokes to passengers generally. The grievor denies several of the details of the complaint.

Again precise findings are difficult to make with respect to incidents such as this. There is no doubt however, and the grievor acknowledges it, that his behaviour was improper, although it did not involve direct rudeness to an individual passenger. As the Conductor put it, the grievor "talks too much and jokes excessively", or as the grievor himself is said to have put it to his psychiatrist, his chief complaint is "his quick temper and big mouth".

Given the grievor's own acknowledgment that his conduct was incorrect, precise findings need not be made. The matter was certainly one for which discipline might be imposed. It is to be noted, however, that some passengers appear to have found the grievor friendly, and to have appreciated his presence on the train, if not all of his antics. In this instance too, I conclude that there was not just cause for the penalty imposed. If this second incident had occurred after discipline for the January 23 matter had been imposed, I would not have considered that 20 demerits was excessive. At the material time, however, that had not occurred, and the application of a higher penalty for the repetition of an offence for which one has been penalized would not be appropriate. Having regard to all of the circumstances, it is my view that a penalty of 10 demerits would have been appropriate.

In the result, therefore, there was just cause for assessing a total of 20 demerits in respect of these matters. The grievor's discipline record would then show a total of 50 demerits. He would not be subject to discharge. It was, I think, proper for the Company to restrict the grievor from passenger service work, although I do not consider that a permanent restriction was proper.

While the grievor must be reinstated, it is my view that this is not a proper case in which to award compensation. It is noted that the grievor, although not suffering from any serious mental disorder, has sought psychiatric help! and that his treatment has helped him to be able to handle various situations with diplomacy and tactfulness. The grievor has some fifteen years' service with the Company.

For all of the foregoing reasons it is my award that the grievor be reinstated in employment forthwith, without loss of seniority. The grievor's discipline record stands at 50 demerits, and he may be restricted from passenger service for a period of three months.

J. F. W. WEATHERILL,
ARBITRATOR.