

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1114

Heard at Montreal, Tuesday, July 5, 1983

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Dismissal of Mr. E. Ripley, Track Maintainer.

BROTHERHOOD'S STATEMENT OF ISSUE:

Dismissal of Mr. E. Ripley, a Track Maintainer, employed at
Dorchester, New Brunswick, for unauthorized leave of absence.

The Union contends that dismissal was not for just cause.

The Company disagrees with the Union's contention.

FOR THE BROTHERHOOD:

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

There appeared on behalf of the Company:

P. E. Scheerle	- System Labour Relations Officer, CNR, Montreal
J. A. Cameron	- Manager Labour Relations, CNR, Montreal
T. D. Ferens	- System Labour Relations Officer, CNR, Montreal
H. L. Purdy	- Track and Roadway Engineer, CNR, Moncton

And on behalf of the Brotherhood:

Paul A. Legros	- System Federation General Chairman, BMW, Ottawa
J. J. Roach	- General Chairman, BMW, Moncton
F. L. Stoppler	- Vice-President, BMW, Ottawa

AWARD OF THE ARBITRATOR

The Company has raised the preliminary objection that this grievance was not filed in timely fashion. It will be noted that this is an "Ex Parte" proceeding.

The grievor's discharge notice was prepared on October 21, 1982, and he was advised of his discharge on October 26. The grievor refused to accept the notice and refused to sign the receipt portion of the form. Nevertheless, he did have actual notice of discharge on that date and it is from that day that the time for filing a grievance (twenty-eight calendar days, pursuant to Article 18.6 of the Collective Agreement), is to be counted. The grievance is dated November 25, 1982. That is in excess of the time provided for in the Collective Agreement, and the grievance was thus not filed in timely fashion. As has been noted in other cases, the Arbitrator has no discretion in such a case. The objection to timeliness was promptly raised, and while replies were made to the grievance, I do not consider that the objection was waived.

If, however, it be thought that by making subsequent reply to the grievance without specifically referring to its objection to timeliness the Company must be taken to have waived that objection, it is my view that on its merits, the grievance cannot succeed.

The grievor, a Track Maintainer, had been employed by the Company since July, 1975. On February 15, 1982, he was disciplined for unauthorized leave of absence. He did not report for work on August 3, 1982. He had not sought leave of absence, but, being absent, called the Company some time in that week to request leave of absence, on the ground that he was unable to come to work because he was in jail. The grievor had been convicted and sentenced to two months in jail for trafficking in narcotics. I do not consider that the grievor's inability to report to work in these circumstances was entirely "beyond his control", since it was attributable to his own criminal conduct. That conduct did not relate to his work, and the grievor was not discharged on that account, but rather because he did not report to work - and had not made timely arrangements for leave. The Company was not obliged to grant leave of absence in these circumstances.

The grievor was advised that leave was not granted and, as I find, was told that he would have to attend an investigation before reporting to work. At the end of his jail term, the grievor did not report for investigation, and instead of seeking to return to the gang on which he had been working, called another supervisor, who was unaware of the situation, to see if he could work for him. He did so for a time until this rather devious ploy was discovered, and he was then called for investigation.

The grievor was in fact absent from work for a protracted period in circumstances in which the Company was not required to grant leave, and did not do so. The grievor was devious, and appears to have been uncooperative at every stage. In my view, there was just cause for his discharge. The grievance is accordingly dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.