CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1159

Heard at Montreal, Thursday, November 17, 1983

Concerning

ALGOMA CENTRAL RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of the Organization with respect to discipline assessed to Trainman K. G. Miron for incident that occurred on January 24, 1983.

JOINT STATEMENT OF ISSUE:

Yard Helper, K. G. Miron regularly employed in Yard Service, on the 1600 to 2400 shift, booked sick on completion of eight hours work and left Company property on January 24, 1983 prior to completion of work assigned to the crew without authorization for which he was assessed 10 demerit marks.

The Union requested the Company to remove the discipline from Trainman Miron's record.

The Company declined the request of the Organization.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) GLEN WITTY General Chairman	(SGD.) V. E. HUPKA FOR: Vice-President-Rail

There appeared on behalf of the Company:

- Victor E. Hupka - Manager, Industrial Relations, ACR, Sault Ste. Marie
- Newell L. Mills - Superintendent-Transportation, ACR, Sault Ste. Marie

And on behalf of the Union:

- J. Sandie - Vice-President, UTU, Sault Ste. Marie

AWARD OF THE ARBITRATOR

On January 24, 1983, the grievor, Mr. K. Miron, "booked off" sick on completion of eight hours work and left the company premises without securing proper authorization. Mr. Miron is employed as a "yard helper" whose regular shift is between 1600 to 2400 hrs. Apparently the grievor left the company's premises, without permission, ten minutes prior to the termination of his regular shift. The

employer's representatives indicated at the hearing that the grievor was scheduled to work an extra half-hour of overtime.

The grievor suffers from an injury that has affected his right shoulder. On the day in question the grievor advised the conductor, Mr. R. McPhee, that he intended to book off sick because of the pain in his shoulder. Prior to the termination of his shift he entered the yard office and noted in the attendance book that he was leaving early for the aforesaid reasons. According to the transcript, yardmaster Matthews observed the grievor leave the premises. As he left he heard him say that he had to go. Mr. Matthews could not recall the grievor telling him that he was booking off sick. At that time Mr. Matthews did not notice the exact time. It was only at a later date that he noticed that the grievor left the premises prior to the termination of his shift and without proper authorization. The grievor was assessed ten demerit points for his alleged infraction.

The trade union submits two arguments in defence of the grievor's actions. It is significant to point out that the company has not disputed the grievor's injury nor the fact that he is an exemplary employee. In this light the trade union claims that yardmaster Matthews was under some obligation to have interrupted the grievor when he observed him leaving the yard office. In saying nothing, the yardmaster must be deemed to have given his consent thereby allowing the grievor's early departure. Secondly, the accepted practice engaged in by employees at that particular yard is to leave the premises without directly bringing to the yardmaster's attention the reason for their early departure. In short, the employer has condoned the exact infraction on past occasions for which it is now punishing the grievor. It is therefore suggested that I ought to remove the ten demerit points from the grievor's record.

I am satisfied, as the employer has submitted, that the grievor was obliged to take positive steps to advise the yardmaster of his intention to leave the premises early and the reasons therefore. In such circumstances the yardmaster cannot reasonably be expected to presume that the grievor's departure was occasioned for legitimate cause. Nor am I satisfied that the grievor, in signalling the yardmaster of his intention to leave, has thereby satisfied his responsibility of securing the necessary consent. In short, the grievor was properly disciplined for just cause.

I am not convinced, however, having regard to the admittedly loose practice that prevailed at the time in question that the employer was warranted in imposing ten demerit points. It is my view, given the grievor's exemplary record, that he should have merely been given a written warning of his infraction.

I am convinced that that would have served the purpose of coxm unicating to the grievor the notion that the company would no longer tolerate, in future, such misconduct. For that reason, the imposition of ten demerit points ought to be rescinded and should be replaced by a written warning.

DAVID H. KATES,
ARBITRATOR.