

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1276

Heard at Montreal, Tuesday, September 11, 1984

Concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Discharge of trainman G. Turbide.

JOINT STATEMENT OF ISSUE:

On 1983-08-07 at 15:45 hrs, trainman G. Turbide booked off. Prior to the expiration of the 14th day, 1983-08-21 at 12:55 hrs trainman G. Turbide then booked sick without proper authorization, thus in violation of General Instruction G-34. Following an investigation held on 1983-08-31, trainman Turbide was assessed 55 demerit marks leading to his discharge.

The Union filed a grievance requesting the withdrawal of the discipline assessed and the reinstatement of the employee. The Railway denied the grievance.

FOR THE UNION:

(SGD.) JACQUES ROY
General Chairman

FOR THE COMPANY:

(SGD.) ROGER L. BEAULIEU
Manager Labour Relations

There appeared on behalf of the Company:

| | |
|-------------------|---|
| Marie Tardif | - Counsel |
| Roger L. Beaulieu | - Labour Relations Manager, QNS&LR, Sept Iles (Witness) |
| Keith Turriff | - Supt., Train Movement, QNS&LR, Sept Iles |
| Michel Gauthier | - Counsel |
| Tom McElroy | - Supt. Maintenance of Way, QNS&LR, Sept Iles |
| Jim Sirois | - Trainmaster, QNS&LR, Sept Iles (Witness) |
| Art Dolliver | - Witness, Sept Iles |

And on behalf of the Union:

| | |
|-----------------------|-------------------------------------|
| Richard Cleary | - Counsel |
| Jacques Roy | - General Chairman, UTU, Sept. Iles |
| Jean-Marie St. Pierre | - Vice-Chairman, UTU, Sept. Iles |

AWARD OF THE ARBITRATOR

This is a case where the grievor, Mr. G. Turbide, was discharged for reasons that differed from the reasons that were actually expressed in his letter of discipline. This is not to say that the company was not without cause to take disciplinary action for the ostensible reason for his termination. The evidence established, however, discharge for the stated infraction was simply beyond the realm of reasonableness.

Firstly, it is my finding that the grievor failed to report his availability as a "trainman" on the spareboard as he was scheduled to do by approximately 15:45 hrs on Sunday, August 21, 1983. Earlier that day when the grievor explained his difficulty to the crew clerk in securing air passage from Quebec City to Sept Iles, he was advised of the company's intention to arrange an investigation presumably for his failure to be available for work. At this point the grievor committed the rather dumb act of "booking off sick" for that day. The grievor admitted that he had booked off sick where he was not ill. Indeed, the evidence indicated that had he taken the next plane the grievor would have been available for assignment at 2000 hrs on August 21, 1983.

In this regard, I am satisfied that in the past the company, owing to the frequent trips the grievor took between Sept Iles and Quebec City, tolerated his initial "unavailability" to accept a call because at times it took as much as six hours to a day for the grievor to be called for an assignment.

The truth of the matter is that the grievor resides in Quebec City with his family and maintains a family business there. On August 12, 1983 the grievor requested a three month leave of absence without pay to attend to his business in Quebec City. His request for three months leave was denied because of the company's policy that prohibited leaves of absence for that purpose. Indeed, Article 21.01 of the collective agreement clearly provides:

"Leaves of absence under this Article shall not be granted for the purpose of engaging in work outside the railway service."

Following his rejection of that request the grievor requested a 14 day leave of absence scheduled to expire on August 21, 1983. Upon the company acceding to that request, the grievor proceeded to Quebec City where he candidly admitted that he engaged in work at his business. It is significant to note that such leaves of absence are granted on request and without reasons under General Instruction G-34 which reads as follows:

"A) Leave of absence of fifteen (15) days or more will be authorized only at the Superintendent's Office. Leave request must be submitted in writing on form 97-005. Booking off, booking sick, medical leave, student leave, etc., are all various types of leave of absence which may be granted by the Railway.

B) Employees will not be permitted to be absent for more than fourteen (14) days, without first performing service, unless permission for additional time has been granted through the Superintendent's Office, as per above instruction."

The employer discharged the grievor for being absent from work for more than 14 days without the permission of the Superintendent. In truth, the grievor's unauthorized absence was no more than one shift in that his previous fourteen day absence was clearly an authorized leave granted under General Instruction G-34 (A). In any event his unauthorized leave for that shift on August 21, 1983 coupled with his unsuccessful attempt to book off for that same period on account of sickness precipitated, the employer's decision to discharge.

The grievor's personal record shows a prior infraction for an unauthorized leave that resulted in the imposition of ten demerit marks. A prior incident in 1979 which the company attempted to characterize as a verbal warning was more accurately described by Mr. G. A. Dolliver, former Manager of the Railway, now retired, as a "settlement". In sum, the grievor's long term service with the company was not untainted.

Whatever the ostensible reason that the company had seized upon to support its cause for the grievor's discharge, the real reason appears to have been the grievor's blatant attempt to circumvent the strictures of the collective agreement forbidding leaves of absence for the purpose of enabling employees to attend to their personal businesses. The grievor also candidly admitted that so long as the company is going to give him leaves of absence upon his request pursuant to General Instruction G-34, he intends to continue to attend to his business concern in Quebec City.

I am quite satisfied that the company had cause to impose a substantial disciplinary penalty for the ostensible reason for the grievor's unavailability for assignment due to his unauthorized leave on August 21, 1983, which was aggravated by his aborted attempt to book off sick. Notwithstanding CROA Case 498, however, I am not satisfied that the grievor's discharge was warranted for that particular infraction. The discharge penalty is patently unseemly in the light of the employer's real but unstated concern (in its letter of discipline) that contrary to the employer's policy and the collective agreement the grievor was abusing his leave of absence for the untoward purpose of attending to his personal business affairs. For this reason I have resolved, somewhat reluctantly, to reinstate without compensation Mr. Turbide to his trainman's position for the ostensible acts of misconduct cited by the employer.

Before leaving this case I wish to raise the issue whether the company's letter of understanding endorsing employees' requests for a leave of absence caused by the downturn of business at the Schefferville Mine is at all relevant. It seems clear that if that letter obviated the company's policy as expressed in Article 21.03 of the collective agreement then the appropriate route for the grievor to have followed was to grieve the company's denial of his three

month request for leave. It was hardly appropriate for the grievor to achieve the same objective through other means. Be that as it may, the grievor was not discharged (where in my view he should have been) for his act of insubordination in taking leave under General Instruction G-34 where he knew that the purpose of the leave was frowned upon by his employer. Rather, he was discharged for his unauthorized absence from the spareboard for a period of not more than a shift. I have concluded it would simply be unreasonable to uphold a discharge for that reason.

DAVID H. KATES,
ARBITRATOR.