

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1297

Heard at Montreal, Tuesday, November 13, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Discipline assessed Bridgeman S. A. Eisan for continuous lateness and absenteeism.

JOINT STATEMENT OF ISSUE:

Bridgeman Eisan was absent from work on July 29, August 2, 29 and September 12, 1983. In addition, he was late for work on August 8, 12, 26 and September 2, 8, 16, 21 and 22 of 1983. An investigation was held on October 11, 1983 following which he was assessed 15 demerits for continuous lateness and absenteeism. This resulted in Mr. Eisan's discharge from service due to accumulation of demerits in excess of 60.

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 BROTHERHOOD:

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

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
Assistant Vice-President
Labour Relations

There appeared on behalf of the Company:

P. E. Scheerle	- Labour Relations Officer, CNR, Montreal
T. D. Ferens	- Manager Labour Relations, CNR, Montreal
K. J. Kulin	- Bridge & Structures Maintenance Engineer, CNR, Toronto
G. E. Karl	- B & B Master, CNR, Toronto South
P. G. Haydon	- B & B Master, CNR, Toronto North
J. Dunn	- Labour Relations Officer, CNR, Toronto

And on behalf of the Brotherhood:

P. A. Legros	- System Federation General Chairman, BMW?, Ottawa
R. Y. Gaudreau	- Vice-President, BMWE, Ottawa
L. Boland	- Federation General Chairman, BMWE, London

J. J. Roach

- General Chairman, BMW, Moncton

AWARD OF THE ARBITRATOR

The evidence conclusively established that the grievor's timekeeping record over a four year period between 1980 - 1984 reflected an abysmal attitude towards his responsibilities in providing his employer with reliable service.

Notwithstanding the countless efforts of his supervisors to persuade him to improve his attendance and punctuality the grievor continued, despite his many undertakings to improve, to engage in the same unreliable behavior. Indeed, on four separate occasions the employer imposed disciplinary penalties in varying degrees of severity in order to impress upon the grievor the seriousness of his acts of misconduct. Apart from demonstrating that he was inattentive or oblivious to the employer's concerns the grievor nonetheless continued his unacceptable habits and did not even exhibit the simple courtesy of advising his supervisors of his intended absences.

The culminating incident was precipitated by the grievor's absence from work on September 21 and 22, 1983. Following the investigation of that incident he was discharged upon the imposition of fifteen demerit marks.

The trade union does not contest the grievor's abysmal record. Mr. Eisan never grieved the "justness" of the penalties imposed. The sole ground relied upon by the trade union to mitigate the discharge penalty is the defence that the grievor was at all times preoccupied with his father's medical condition. The grievor's father was undergoing treatment for cancer. The trade union alleged that the grievor's mediocre timekeeping record corresponded with his father's deteriorating medical condition. For example, it was suggested that the grievor often was required, when otherwise scheduled to report for work, to drive his father to the hospital for chemotherapy treatment.

The grievor's supervisors, Mr. Karl and Mr. Kulin attended hearing. Each testified that at no time did the grievor indicate to them that his father's condition was specifically the source of his difficulty preventing his attending work on a regular basis. The most they were told was that the grievor had personal problems that he was in the process of overcoming. Moreover, no reason was ever given as to why the grievor, even if preoccupied with his father's condition, could not contact his supervisors to advise them that he could not report for work or that he expected to be late.

Indeed, I attach no credibility to the grievor's explanation. The most damaging evidence that his father's condition was not the source of his difficulties was the fact that he never grieved the past incidents of discipline arising from his admittedly unwarranted absences and lateness. Quite clearly, the grievor has demonstrated that he simply is unworthy of consideration for reinstatement. Accordingly, the imposition of fifteen demerit marks for the culminating incident is sustained. The grievor's discharge, having regard to his past accumulation of 48 demerit marks, is thereby

justified. The grievance is dismissed.

DAVID H. KATES,
ARBITRATOR.