

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1331

Heard at Montreal, Tuesday, February 12, 1985
Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

UNITED TRANSPORTATION UNION

DISPUTE:

The dismissal of Yardman J. Dawson of Montreal, Quebec, for accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

Effective December 22, 1982, Yardman J. Dawson was assessed 30 demerit marks for being unavailable for duty on 17 occasions during the months of November and December 1982, while assigned to the Montreal yardmen's spare list. Subsequently, he was dismissed for accumulation of demerit marks.

The Union appealed the dismissal on the basis that it was too severe.

The Company rejected the appeal.

FOR THE UNION:

(SGD.) C. CLEMENT
FOR: General Chairman

FOR THE COMPANY:

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

There appeared on behalf of the Company:

J. B. Bart	- Labour Relations Officer, CNR, Montreal
D. W. Coughlin	- Manager Labour Relations, CNR, Montreal
J. A. Sebesta	- Coordinator Transportation, CNR, Montreal
P. J. Thivierge	- Manager Labour Relations, CNR, Montreal
C. St. Cyr	- Labour Relations Assistant, CNR, Mrntreal
P. Marleau	- Regional Coordinator - Crews, CNR, Montreal

And on behalf of the Union:

W. G. Scarrow	- General Chairman, UTU, Sarnia
Claude Clement	- Local Chairman, 414, UTU, Montreal
James Dawson	- Grievor, Montreal

AWARD OF THE ARBITRATOR

The culminating incidents resulting in the grievor's discharge

pertained to his being assessed 30 demerit marks for being unavailable for duty on 17 occasions while assigned to the Montreal Yardmen Spare List. Because the grievor's record indicated that he had hitherto accumulated 45 demerit marks for innumerable missed calls off the spareboard over the previous 12 month period prior to the culminating incidents the employer severed the grievor from its employ. At issue is whether I am prepared to reinstate the grievor without compensation or other benefits. Or more succinctly, does the grievor merit a one last chance?

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The simple answer is that he does not. The grievor knowingly, deliberately and repeatedly ignored his employer's warnings to adhere to a reasonable standard of availability off the spareboard. He undertook to improve his reliability in the face of successive and progressive disciplinary actions taken by the employer. He simply ignored those warning and misled his superiors with his commitments to improve thereby challenging the employer's credibility with respect to its prerequisite for reliability as a condition of his continued employment.

Instead, the grievor consciously chose, which he now admits to have been imprudent, to devote himself to the exclusion of his job responsibilities to building his own home. At that time he was fully aware of the financial upset he might cause his immediate family by reason of his placing his job security at risk. The grievor clearly must accept the responsibility as well as the consequences of his actions. On the other hand, the employer, in my view, had already extended the grievor his last chance or perhaps several last chances when it allowed the grievor to flaunt its warnings for so protracted a period of time. Indeed, it may have done so to the prejudice of its own credibility in the eyes of other employees on the spareboard.

For better or worse, the spareboard procedure is a fundamental mechanism for the distribution of work opportunities amongst employees of a railway enterprise. Its design is to allocate work assignments in an orderly, fair manner to employees as operational needs dictate. On the one hand the spareboard process represents at a given time an available source of manpower for employer use; on the other hand, it ensures fairness in the even-handed distribution of available work as it arises. Flexibility in the operation of the spareboard mechanism with regard to availability and enforcement must be exhibited respectively by both employee and employer.

In the grievor's case his actions have demonstrated that such flexibility was solely a one way street. His attitude might very well conform to an employee's personal needs but from an operational viewpoint that attitude will not result in a reliable, predictable railway service.

In the last analysis the scope of my mandate under the collective agreement is to determine whether just cause for discharge was proven supporting the grievor's termination. The entire theme of the trade

union's written brief suggested that just cause was shown. A request is made nonetheless that I extend the grievor one last chance. In other words the written brief indicates that some employees must actually experience the chilling effect of discharge in order to appreciate the consequences of their misdeeds.

In response to that notion my position is quite clear and definitive. Once just cause for discharge is proven it is simply too late. My discretion to reverse the employer's action is simply spent and I would be betraying my responsibility in substituting a more lenient penalty for a discharge that all parties have conceded was just.

For all the foregoing reasons the grievance is dismissed.

DAVID H.
ARBITRATOR.