CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1349

Heard at Montreal, Tuesday, May 14, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim of Spareboard employee H. Grundie of MacMillan Yard, Toronto, that she was disciplined without an investigation.

JOINT STATEMENT OF ISSUE:

On 16 January 1984 Ms. Grundie was called to work a vacancy as a Chauffeur. Ms. Grundie indicated that she was not feeling well and did not accept the Chauffeur vacancy. On 17 January Ms. Grundie was interviewed by her Supervisor. The contents of the interview were recorded in a letter which was sent to Ms. Grundie. A copy of the letter was placed on her personal file.

The Brotherhood submitted a grievance alleging that the letter is a form of discipline and that the Company has disciplined Ms. Grundie without an investigation in violation of Articles 24.1 and 24.2 of Agreement 5.01.

The Brotherhood requests that the letter be removed from Ms. Grundie's personal file.

The Company denies that Ms. Grundie has been disciplined and has declined to remove the copy of the letter from her personal file.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) TOM McGRATH National Vice-President	(SGD.) D. C. FRALEIGH Assistant Vice-President Labour Relations

There appeared on behalf of the Company:

S. A. MacDougald	- System Labour Relations Officer, CNR, Montreal
S. W. Wilson	- System Manager Labour Relations, CNR, Montreal
A. Heft	- Labour Relations Officer, CNR, Toronto
P. White	- Traffic System Supervisor, CNR, Toronto
R. Vincent	- Analyst, CNR, Montreal

And on behalf of the Brotherhood:

T. N. Stol	- Representative, CBRT&GW, Toronto
R. Chapman	- Local Chairman, Local 216, CBRT&GW, Toronto

AWARD OF THE ARBITRATOR

In this case the grievor refused a call off the "spareboard because she stated she was not feeling well. After this incident the grievor was interviewed by her supervisor and advised with respect to the appropriate procedures to follow in the event of a future refusal for a like reason. During the course of the interview the company's concern with respect to the reliability of its spareboard employees in responding to calls was emphasized. By letter dated January 17, 1984 the grievor's "corrective interview" was recorded and placed on her personal file. The company concede that should a future incident of a refusal occur for like cause (without the appropriate procedures having been followed) then it would use the letter

containing the record of "the corrective interview" in a subsequent arbitral proceeding where discipline had been imposed. In other words, the record of the corrective interview could conceivably be used to the grievor's prejudice at a later date.

The trade union's complaint is that the letter placed on the grievor's personal file recording "the corrective interview" constituted "discipline" and thereby warranted the invocation of the "investigation" procedures contemplated under Articles 24.1 and 24.2 of the collective agreement. In the absence of employer recourse to those procedures the request is made that the letter be expunged from the grievor's personal record.

I agree. The letter evidencing a record of "the corrective interview", however magnanimous the employer's intentions, constituted a "warning". Simply put, the warning communicated was that any failure on the grievor's part to adhere to the appropriate procedures where a refusal of a call off the spareboard is occasioned by her "not feeling we will result in the employer taking action to her prejudice. As such, the letter constituted a disciplinary response by the employer to that employee's refusal of a call off the spareboard. Moreover, the company's admission that it may very well use the letter to the grievor's prejudice in a subsequent arbitration case confirms the disciplinary (i.e. progressive) purpose of "the corrective interview".

Nothing in this decision is intended to suggest that the company's action may not have been warranted. The company, however, was obliged under the relevant provisions of the collective agreement to conduct the appropriate investigation designed for dealing with potential disciplinary action. And only upon the exhaustion of that procedure could the company then impose a warning upon the grievor

for use as part of her disciplinary record.

As a result, the grievance succeeds. The employer is directed to remove the letter relating to the employee's"corrective interview" from her personal file. I shall remain seized for the purpose of

DAVID H. KATES,
ARBITRATOR.