

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1376

Heard at Montreal, Tuesday, June 11, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY  
(CN Rail Division)

and

CANADIAN BROTHERHOOD OF RAILWAY,  
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Appeal of discipline of Intermediate Clerk T. J. Steben of Montreal, Quebec.

JOINT STATEMENT OF ISSUE:

On July 6, 1984, Intermediate Clerk T. J. Steben's hours of duty were from 0730 to 1530 hours. During this period, he was absent from his work area on several occasions.

The Company held an investigation and subsequently assessed five demerits to his record "for frequent unauthorized absences from your work station on July 6, 1984".

The Brotherhood contends the discipline was applied in a discriminatory manner and that the Company could have prevented the situation. The Company denies the Brotherhood's contentions and has declined to remove the discipline.

FOR THE BROTHERHOOD:

(SGD.) TOM McGRATH  
National Vice-President

FOR THE COMPANY:

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

There appeared on behalf of the Company:

W. W. Wilson	- Manager Labour Relations, CNR, Montreal
S. A. MacDougald	- Labour Relations Officer, CNR, Montreal
M. Vaillancourt	- Employee Relations Officer, CNR, Montreal
J. J. Kelly	- Senior Manager - Interline & Computer Rating, CNR, Montreal
D. Sinclair	- Supervisor - Revisions, CNR, Montreal
L. F. Caron	- Employee Relations Assistant, CNR, Montreal

And on behalf of the Brotherhood:

G. Thivierge	- Regional Vice-President, CBRT&GW, Montreal
R. Johnston	- Local Chairman, CBRT&GW, Montreal

AWARD OF THE ARBITRATOR

On the facts adduced Mr. Steben was absent from work on several occasions during the course of a single shift without the authority of his Supervisor. In total he was away from his work station for 2 hours and 41 minutes on July 6, 1984.

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The grievor had been warned previously to secure the permission of his Supervisor should he require for legitimate reason to leave the work place. The trade union does not suggest the grievor held such legitimate reason in the particular circumstances of this case. Indeed, there is no suggestion that the trade union challenges the allegation that the grievor did not attempt to secure the permission of his Supervisor to absent himself.

What the trade union objects to is the close scrutiny the grievor was subjected to by his employer in order to establish the grievor's misconduct. While I might agree in the normal course of a work shift an isolated 3 minute absence from an employee's work station is per se legitimate, the evidence indicated that both in frequency and duration the grievor's absences on July 6, 1984 were unusual and extraordinary. I simply cannot fault an employer, when it suspects wrongdoing committed by its employees, of being certain of its position before charges and accusations of misconduct are made.

Because the grievor's unauthorized absences from his work station was a known problem I cannot attribute any male fides on the employer's part in its exercising care in making certain that its allegations can be proved before invoking the disciplinary process. Simply put, there is no evidence of entrapment initiated by the employer to entice the grievor into committing misconduct. For that reason I have not been satisfied that the grievor was treated discriminatorily or has otherwise been singled out for improper treatment.

The assessment of 5 demerit marks is sustained and the grievance is accordingly dismissed.

DAVID H. KATES,  
ARBITRATOR.