

CANADIAN RAILWAY OFFICE OF ARBITRATION  
CASE NO. 1381

Heard at Montreal, Wednesday, June 12, 1985  
Concerning

CANADIAN NATIONAL RAILWAY COMPANY  
(CN Rail Division)  
and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Appeal of the discipline assessed the record of Foreman Welder G. Ernst, 30 July 1984.

JOINT STATEMENT OF ISSUE:

On 25 April 1984 Mr. Ernst was advised in writing not to abuse the Work Block Monitor by adding his personal comments. The grievor was also adding his personal comments on his Weekly Work Reports during the same period.

Following this directive, Mr. Ernst stopped adding his comments to the Work Block Monitor but continued adding them to his Weekly Work Reports.

The grievor received a second written warning dated 8 May 1984 advising him not to add his personal comments to his Weekly Work Reports. Mr. Ernst ignored the written instructions and he was again issued a written warning on 23 May 1984 advising him to refrain from adding his personal comments to the Weekly Work Reports.

Following an investigation, Mr. Ernst was assessed 15 demerit marks for failure to follow a direct order on two separate occasions, May 8 and May 23, 1984.

The Brotherhood contends that the discipline was unwarranted.

The Company has denied the Brotherhood's contention.

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:

J. Russell	- Labour Relations Officer, CNR, Montreal
T. D. Ferens	- Manager Labour Relations, CNR, Montreal
D. J. Bloomfield	- Welding Supervisor, CNR, London
R. R. Hannah	- Welding Supervisor, CNR, Toronto

And on behalf of the Brotherhood:

W. Montgomery	- General Chairman, BMW, Belleville
P. A. Legros	- System Federation General Chairman, BMW, Ottawa
R. Y. Gaudreau	- Vice-President, BMW, Ottawa
G. Ernst	- Grievor, Kingston

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#### AWARD OF THE ARBITRATOR

The grievor, Gang Foreman G. Ernst, was assessed 15 demerit marks for his insubordinate actions in failing to follow his employer's directives to cease making personal comments about his supervisors on his Weekly Work Reports. Or, from another perspective, the grievor allegedly disobeyed management's directive to confine his remarks to work related matters in those reports. The evidence disclosed that the grievor was given the benefit of numerous verbal and written warnings prior to the employer's decision to assess him 15 demerit marks.

In order to appreciate the dispute in this case it is necessary that the facts be placed in their appropriate context. The grievor is employed as a Gang Foreman and as a part of his functions he is required to fill out Weekly Work Reports. On the forms provided for this purpose is a space inviting the foreman's personal remarks relating to the work process. The trade union does not dispute the notion that work related matters, such as problems in productivity, are intended to be expressed so that management may be alerted to any difficult and thereafter conduct itself accordingly.

At the relevant time the grievor, Mr. Ernst, appeared to be encountering difficulties with his superiors. It is of no relevance for present purposes as to whether or not these problems had a legitimate basis. It suffices to say that the grievor perceived that there was a systematic strategy on the part of his supervisors to undermine his position and to discredit his effectiveness. As a result the grievor accused his supervisors of harassing him and expressed his concerns in language contained in his Weekly Work Reports that can only be characterized as vituperative.

Management concluded that the grievor was using the Weekly Work Reports for purposes that they were not designed to serve. Accordingly Mr. Ernst was asked to cease making personal attacks and accusations against individual supervisors in those Reports. Moreover, he was directed to restrict his remarks to work related matters. When Mr. Ernst persisted in the flouting of the employer's written directives of May 8 and May 23, 1984, he was assessed 15 demerit marks for his alleged insubordination.

The principal issue that must be resolved in this case is whether the grievor was acting in an insubordinate manner when he persisted in criticizing his superiors after he was asked to cease such activity. It is important to emphasize that I have no hesitation in finding

that should the grievor have observed his supervisors abusing an UCOR Rule or committing an infraction such as consuming alcohol during the course of a shift, he would be properly reporting a legitimate work-related concern to management in the Weekly Work Report.

But this was not the grievor's objective. Mr. Ernst's own admission indicated that he was engaged in a personality conflict with his supervisors. He thereby exploited the discretion he was given by management to make work related remarks in the Weekly Work Report in order to do battle with his supervisors. In other words, the employer perceived that the grievor was abusing that particular function in order to advance his own interests. As a result there is no doubt in my mind that the grievor was impairing the effectiveness of the Weekly Work Report as well as his own ability as a Gang Foreman. Management clearly could not differentiate between those remarks that expressed a legitimate complaint that was work related from a complaint, irrespective of merit, that was not relevant to the purpose designed by the Weekly Work Report. As a result he was asked to cease his personal attacks and complaints against his supervisors that related to his own conflict with them.

The grievor refused to appreciate the consequences of his actions and persisted in the very activity he had been directed to stop. He thereby forced management's hand in its resorting to more severe discipline to emphasize the seriousness of his misconduct.

In the last analysis, the grievor should have sought a more effective way to voice to management his concerns about the alleged harassment he had been subjected to. A great deal of discussion was taken up at the hearing as to whether the grievor could have grieved his alleged "unfair treatment" at the hands of his supervisors pursuant to the grievance procedure. He thereby would have adhered to "the obey now grieve later" rule. In my view, whether or not such recourse was available to him under the grievance procedure represents a "red herring". The grievor at all material times was represented by a trade union. He clearly should have taken his complaint about his supervisors to the trade union and asked for their assistance in resolving his difficulty with the appropriate management personnel. Recourse to the medium of the Weekly Work Report to express his dissatisfaction was simply not an appropriate manner in dealing with his real complaint. Irrespective of whether or not that complaint could be made the subject matter of a grievance, his trade union is couched with the responsibility of serving his best interests in forwarding an employees' work-related problems to management for solution. The formal grievance procedure represents only one method of resolving such complaints. In other words, other means are available to the trade union, other than the grievance process, to resolve an employee's legitimate complaints. And, in many respects informal recourse to management deters complaints from escalating into grievances that are processed under the collective agreement.

In the last analysis, the grievor did not obey a reasonable directive of the company to confine his remarks on the Weekly Work Reports to work related issues. It is my view that he was clearly insubordinate in failing to follow that directive. Moreover, in exploiting the

Weekly Work Reports for a purpose other than for which it was designed the grievor impaired his own effectiveness as a Gang Foreman.

Accordingly, I am not inclined to vary the penalty that was imposed for the grievor's misconduct. The grievance therefore is dismissed.

DAVID H. KATES,  
ARBITRATOR.